



OFFICE OF THE ELECTION OFFICER  
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
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Washington, DC 20001

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Election Officer

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November 18, 1991

**VIA UPS OVERNIGHT**

Thomas A. Hoffman  
206 South Claire Drive  
Panama City, Florida 32401

R. V. Durham  
c/o Hugh J. Beins, Esquire  
Beins, Axelrod, Osborne  
& Mooney  
2033 K Street, NW  
Suite 300  
Washington, DC 20006-1002

Jerry Burnthorn, Secretary Treasurer  
Gene Tucker, President  
IBT Local Union 991  
112 South Broad Street  
Mobile, Alabama 36602

Re: Election Office Case No. P-1052-LU991-SEC

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules") by Thomas A. Hoffman, a member of Local Union 991. Mr. Hoffman contends that two officers of Local 991, Jerry Burnthorn, Secretary-Treasurer and Gene Tucker, President, held two special Union meetings for Local 991 members in the Panama City, Florida area which were in reality campaign rallies for R. V. Durham and the R. V. Durham Unity Team.

This protest was investigated by Regional Coordinator Don Williams. The investigation revealed that by notice dated August 15, 1991, Local 991 members employed by United Parcel Service, Roadway Express, Consolidated Freight and Yellow Freight in Panama City, Florida were informed of a special Local Union meeting to take place on August 22, 1991 at 8:00 p.m. at the Bayside Inn in Panama City. Although the Local has a regular monthly membership meeting at its headquarters in Mobile, Alabama, the Local periodically schedules meetings in areas geographically other than Mobile to allow members employed in those areas the opportunity to meet. The notice stated, "If you are concerned about your health and welfare, pension benefits, and your job as a whole, it is an absolute MUST that you attend this meeting" (emphasis in original). Mr. Hoffman is a Local 991 steward at Yellow Freight in Panama City. He attended the August 22, 1991 meeting.

Thomas A. Hoffman  
November 18, 1991  
Page 2

The only officer of the Local 991 present at the August 22 meeting was its President Gene Tucker, who is also a Local Union business agent. The Panama City meeting was scheduled for August 22 since Mr. Tucker had other appointments in Panama City on that date. The purpose of the August 22, 1991 meeting was (1) to allow Local members employed by the freight companies in Panama City to become acquainted with Mr. Tucker;<sup>1</sup> (2) to discuss pensions and insurance; and (3) to select a new steward for the UPS terminal.

Mr. Tucker agreed that in addition to discussing Union matters, he intended to campaign and allow other members to address campaign issues. During the meeting, he passed out some literature challenging General President candidate Ron Carey's purported position on regional pay differentials; he also spoke favorably on policy positions taken by General President candidate R. V. Durham.

Thirty minutes after the meeting started, Mr. Tucker started distributing his campaign literature; Mr. Hoffman challenged the propriety of such distribution. Mr. Tucker did not directly respond; rather, he began talking about R. V. Durham and unfurled a large flier for the R. V. Durham Team. Mr. Hoffman rose to challenge that presentation when Mr. Tucker became very ill. Mr. Hoffman then walked out of the meeting and most of the members in attendance, approximately 35, left with him. Mr. Tucker, being extremely ill was assisted back to his hotel room by some of the members. The meeting concluded at that time, prior to a UPS steward being selected. Mr. Tucker paid for the meeting room personally.

The November 5, 1991 meeting also took place at the Bayside Inn in Panama City, Florida. The meeting was again for the Local 991 members employed by United Parcel Service, Roadway Express, Consolidated Freightways and Yellow Freight in the Panama City area. Notice of the meeting was posted on Union bulletin board at worksites at those locations and advised members: "It is most important that you attend!!!!!" (emphasis in original). The notice does not state the purpose of the meeting.

The November 5, 1991 meeting was conducted by Jerry Burnthorn, Local 991 Secretary-Treasurer and a business agent for the Local. Mr. Tucker was also present as was Mr. Hammond. The meeting began at approximately 8:00 p.m. It is undisputed that Union business was conducted at this meeting; specifically, both a recent (October 19, 1991) change of operations at Consolidated Freightways involving Panama City, Florida routes, and the new language of the National Master Freight Random Drug Testing Policy were discussed. The selection of the new steward for the UPS terminal

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<sup>1</sup> Mr. Tucker had recently been assigned business agent responsibility for Local members employed by freight companies.

Thomas A. Hoffman  
November 18, 1991  
Page 3

at Panama City--interrupted by Mr. Tucker's illness at the August 22, 1991 meeting--was completed. Other miscellaneous Local matters were also raised.

During the course of the meeting both Mr. Hoffman and Mr. Burnthorn talked about their respective candidates for IBT General President, namely Ron Carey and R. V. Durham. Both questioned each other about policy positions taken by their respective candidates. Finally, Mr. Hoffman asked Mr. Burnthorn whether the meeting had become a campaign rally for R. V. Durham. Mr. Burnthorn replied that he paid for the meeting and would run it as he saw fit.<sup>2</sup> At this point, Mr. Hoffman became disgusted and left. At the end of the meeting--after the meeting was formally concluded--Mr. Burnthorn distributed campaign literature on behalf of the R. V. Durham Unity Team.

The *Rules* do not prohibit discussion of the International Union election or positions taken by International Union candidates by Union members at a Local Union meeting. The *Rules* do prohibit the use of Union funds or resources for campaign purposes and prohibit candidate presentations or forums held at Local Union meetings unless all candidates are given an equal opportunity to present their positions to the membership. The Election Officer does not find that either Local Union meeting held was a candidate forum. Clearly, no candidates were present at the meetings nor were any invited to attend the meetings. The issue then becomes whether the August 22, 1991 and November 5, 1991 meetings were in fact Union meetings for the purpose of Union business or were "sham" meetings held for the purpose of enabling the Local officers to campaign on behalf of the R. V. Durham Unity Team.

The Election Officer finds that the November 5, 1991 Local Union meeting for Local 991 members employed in Panama City was just that, a Local Union meeting. Clearly, Union business was conducted at the meeting; the date of the meeting was appropriate given both the recent change in operations at Consolidated and the new drug policy for all members in the freight industry and these issues provided an immediate purpose for holding the meeting. To the extent that there was discussion concerning International Union officer candidates at the meeting, the Election Officer finds that any member was free to express, and did express to the entire membership present, his position either supporting or opposing the various candidates. That Mr. Burnthorn distributed campaign literature at the end of the meeting does not violate the *Rules* so

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<sup>2</sup> Mr. Burnthorn did pay for the meeting room personally. He states that he did so to avoid any potential impropriety since he agrees campaign issues were discussed at the meeting. He contends, however, that the Local could have paid the meeting expenses since the meeting was a legitimate Local Union membership meeting.

long as no other member was prevented from doing so. There is no evidence that any member was so prevented.<sup>3</sup>

Similarly, the August 22, 1991 meeting appears to have been called for legitimate Union business purposes. However, that meeting was relatively short, apparently terminated by Mr. Tucker's illness. Further, near the beginning of the meeting, prior to the conduct of much Union business, Mr. Tucker commenced campaign activities on behalf of the R. V. Durham Unity Team; he criticized General President candidate Ron Carey, passed out campaign materials and unfurled a poster promoting the R. V. Durham Unity Team. Given the abrupt termination of the meeting, other members present were not provided an opportunity to engage in similar activities on behalf of their favored International Union officer candidates.

Under these circumstances, it is almost impossible to determine whether the October 22, 1991 meeting was called for legitimate Union purposes or was a "sham" meeting called to permit the Local's officers to engage in campaign activities on behalf of the R. V. Durham Unity Team. Assuming that it was a "sham" meeting--and thus, a violation of the *Rules*--the Election Officer would nonetheless refuse to impose a remedy at this point in time. The meeting took place on August 22, 1991. Mr. Hoffman attended the meeting and while in attendance contended that the meeting was nothing but a "campaign rally," called in violation of the *Rules*. Yet Mr. Hoffman did not file a protest until after the conclusion of the November 5, 1991 meeting. Since Mr. Hoffman's complaint about the August 22, 1991 meeting is grossly untimely, *Rules*, Article XI, § 1(a)(1), the Election Officer would provide no relief, even assuming that the Local violated the *Rules* with respect to the August 22, 1991.

In accordance with the forgoing, this 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,

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<sup>3</sup> The Election Officer would particularly note that Mr. Hoffman claimed, prior to the November 5, 1991 but based upon his experience at the August 22, 1991 meeting, that campaigning would occur. Yet he does not contend that he attempted to pass out campaign literature or was prevented from doing so.

Thomas A. Hoffman  
November 18, 1991  
Page 5

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/ca

cc: Frederick B. Lacey, Independent Administrator

Donald H. Williams, Regional Coordinator

Ron Carey  
c/o Richard Gilberg, Esquire  
Cohen, Weiss & Simon  
330 West 42nd Street  
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c/o Robert Baptiste, Esquire  
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