

OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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Election Officer

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December 2, 1991

VIA UPS OVERNIGHT

Terry Parisi
3A Bayberry Drive
Latham, NY 12110

Howard Bennett
President, IBT Local Union 294
890 Third Street
Albany, NY 12206

Re: Election Office Case No. P-1095-LU294-PGH

Gentlemen:

A protest was filed pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Terry Parisi, a member of Local Union 294. Mr. Parisi contends that he was removed from his position as Sergeant-at-Arms (Warden and Conductor) of Local 294 by Local Union President Howard Bennett because of his support for the candidacy of Ron Carey for IBT General President. The protest was investigated by Regional Coordinator William Kane.

The position of Sergeant-at-Arms or Warden and Conductor is an appointed position. The by-laws of Local Union 294 provide in Section 12(B) that "[a] Warden and a Conductor may be appointed by the Chair and may be removed by him." Mr. Parisi was appointed Sergeant-at-Arms in Local Union 294 approximately 12 years ago by the Local's then-President Nicholas Robitelli.¹ He was removed from this position by the present President, Howard Bennett, on October 29, 1991, simultaneously with Mr. Bennett's removal of the other Sergeant-at-Arms, Anthony DelGallo. See Election Office Case No. P-1042-LU294-PGH, affirmed 91-Elec. App.-234.

Mr. Bennett concedes that he has no complaint with respect to Mr. Parisi's performance as the Local's Sergeant-at-Arms. He claims he removed Mr. Parisi in an

¹ Mr. Robitelli subsequently pleaded guilty to tax evasion in a plea bargaining agreement dismissing 42 counts of misuse of Union funds in exchange for his guilty plea and an agreement not to seek Local Union office.

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effort to economize² and as a result of the settlement of the charges brought against him and other officers of Local 294 by Investigations Officer Charles Carberry for failing to investigate embezzlement of Local Union funds. Given the settlement agreement with Mr. Carberry, Mr. Bennett wants to have his "own people" around him.

Normally, an appointed labor organization official may be removed at will, even if the only basis for removal is the desire of the appointing officer to have "his own people" around him. Finnegan v. Leu, 456 U.S.431 (1982). However, given the unique circumstances of the March 14, 1989 Consent Order and the election process mandated thereunder, the Election Officer and Independent Administrator have held that removal of even an appointed IBT member from his position with the Union based on that member's activities with respect to the 1991 IBT International Union officer election violates the *Rules*. Accordingly, Mr. Parisi's removal as the appointed Sergeant-at-Arms would violate the *Rules* if his removal was based upon his activities on behalf of nominated IBT General President candidate Ron Carey.

Local Union 294 held its Local Union officer election on October 20, 1991. Mr. Parisi served as campaign manager for Anthony DelGallo, who was a candidate for Vice President of Local Union 294, the only contested Local Union officer position. In his campaign for Local Union Vice President, Mr. DelGallo identified himself as a "Carey candidate." Mr. Parisi campaigned with Mr. DelGallo prior to the Local Union's Local Union officer election, distributing DelGallo campaign literature and leaflets on behalf of Mr. Carey's candidacy. Mr. Parisi actively campaigned on Mr. DelGallo's behalf outside the Local Union hall on the day of the Local Union officer election and organized the members who were Mr. DelGallo's observers at the voting sites.

Since the Local Union officer election, Mr. Parisi's campaign activities have been far more limited. He has distributed between 150 and 200 pins and/or bumper stickers promoting Mr. Carey's candidacy. He no longer has any leaflets or other materials to distribute on behalf of Mr. Carey and has not sought to replace his depleted supplies.

Mr. Parisi concedes that his removal as Sergeant-at-Arms was based, at least in part, on his activities in connection with Mr. DelGallo's candidacy for Local Union Vice President. Since Mr. DelGallo campaigned for the Local Union Vice President position

² Mr. Parisi's replacement as Sergeant-at-Arms receives only \$80.00 a month from Local 294 in lieu of the \$154.00 monthly salary received by Mr. Parisi. The evidence does not support a finding, however, that removal of Mr. Parisi was a necessary prerequisite to this expense reduction for the Local; Mr. Parisi's salary could have been reduced even if Mr. Parisi remained as Sergeant-at-Arms.

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as a Carey candidate and Mr. Parisi -- as his campaign manager -- distributed literature for Mr. Carey while campaigning for Mr. DelGallo, Mr. Parisi contends that his removal was based also, at least in part, on anti-Carey animus on the part of Mr. Bennett.

In Election Office Case No. P-1042-LU294-PGH, affirmed 91-Elec. App.-234, Mr. DelGallo admitted and the Election Officer found that Mr. Delgallo was removed from his position as Sergeant-at-Arms for activity connected with the Local Union officer elections, not because of his International Union officer election politics. As the Independent Administrator stated in affirming the Election Officer's decision, "[t]here is nothing in the record to suggest that Mr. DelGallo was removed from his position because of his International Union officer election politics." Slip Opinion at page 4.

Mr. Parisi was removed as Sergeant-at-Arms for Local 294 simultaneously with Mr. DelGallo's removal. Mr. Parisi served as Mr. DelGallo's campaign manager during Mr. DelGallo's campaign for Local Union Vice President. Other Local 294 members - not participants in the Local Union officer election but open and active supporters of the candidacy of Ron Carey for IBT General President -- have not been removed from their positions in Local 294 by Local 294 President Bennett.

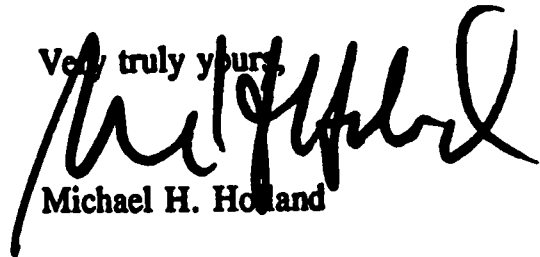
Under these circumstances, it appears clear that the animus, if any, directed against Mr. Parisi -- which resulted in his removal as Sergeant-at-Arms -- was animus based upon the Local Union officer election, not upon Mr. Parisi's International Union officer election politics. The jurisdiction of the Election Officer is limited to the International Union officer election and any activities or conduct that implicates the International Union officer election; the Election Officer has no jurisdiction over Local Union officer elections or activities or conduct which implicate or impact upon such subordinate body elections. *Rules, Preamble*, at pp. 1-2. The Election Officer's investigation of this protest discloses that Mr. Parisi's removal was related to the Local Union officer election and did not implicate or impact upon the International Union officer election. Accordingly, the Election Officer does not have jurisdiction to determine Mr. Parisi's protest and the protest is DENIED on that basis.

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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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/mjv

cc: Frederick B. Lacey, Independent Administrator

William B. Kane, Regional Coordinator (by Hand Delivery)

Ron Carey
c/o Richard Gilberg, Esquire

R. V. Durham
c/o Hugh J. Beins, Esquire

Walter Shea
c/o Robert Baptiste, Esquire