

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

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January 10, 1992

**VIA UPS OVERNIGHT SATURDAY DELIVERY
AND (WHERE NOTED) BY HAND**

Chris Scott
R. V. Durham Unity Team
c/o IBT Local Union 391
Interstate Highway 40
Sandy Ridge Road Exit
Kernersville, NC 27284

Barry Feinstein
President
IBT Local Union 237
216 West 14th Street
New York, NY 10011

Re: Election Office Case No. P-1108-IBT

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Chris Scott on behalf of the R. V. Durham Unity Team. The protest contends that 24 individuals whose names were disclosed by International Union Vice President-at-Large Candidate Barry Feinstein on his Campaign Contribution and Expenditure Report: Pre-Election Report #2, were employers not entitled to make campaign contributions under the *Rules*. The protest was investigated by Regional Coordinator Amy Gladstein.

Other than the listing of their names and employers on Mr. Feinstein's disclosure form, Mr. Scott had no information about the individuals whose campaign contributions he claims are improper. The Election Officer's investigation revealed that the 24 individuals can be grouped into three general groups: (1) members of labor organizations other than IBT; (2) financial and public relations personnel; and (3) attorneys.

I. Members of Other Labor Organizations

Two of the contributors to Mr. Feinstein's campaign are members of the Doctors Council, a labor organization representing physicians employed in municipal hospitals

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of the City of New York.¹ The *Rules* do not prohibit individual members, staffers or officers of labor organizations other than the IBT from making personal campaign contributions to IBT International Union officer candidates, as long as no funds of the labor organization are included in the contribution and provided that the contributor is not otherwise an employer or an employer representative. See Advisory on Campaign Contributions and Disclosure, issued August 14, 1991, ("Advisory") at page 17.

The investigation revealed that both members of the Doctors Council who contributed to Mr. Feinstein's campaign did so with personal funds; no labor organization funds were involved. However, Don Meyers is the Executive Director of the Doctors Council and has managerial and supervisory control over the affairs of the Doctors Council including authority with respect to others employed by the Doctors Council. Accordingly, he must be considered an employer or an employer representative who is prohibited from making campaign contributions under the *Rules*. See Advisory at pages 11-12.

Barry Liebowitz is the elected President of the Doctors Council. He does not presently practice medicine but serves--on a release-time basis--as the full-time head of the organization. Dr. Liebowitz is the person to whom Dr. Meyers reports. Dr. Liebowitz has overall managerial and supervisory control over the operations and employees of the Doctors Council. Accordingly, he is an employer representative within the meaning of the *Rules* and may not make campaign contributions to candidates for IBT International office. Advisory, pages 11-12.

II. Financial and Public Relations Personnel

Of the remaining 22 persons whose campaign contributions Mr. Scott protests, 12 are employed by financial consulting or brokerage firms, one by a financial press, and two by public relations firms. The Election Office investigation revealed that 10 of these individuals have no managerial or supervisory authority on behalf of their employers. Therefore, they are not employers or employer representatives within the meaning of the *Rules*. These individuals--employed by financial consulting or brokerage firms--are all essentially stock salesmen, regardless of their titles.² Richard Kendall, employed by

¹ While Mr. Scott's protest claims that three contributors were members of the Doctors Council, the Election Officer's investigation revealed that Roland Schectman is not a member of the Doctors Council; he is an attorney. Accordingly, the propriety of his campaign contribution under the *Rules* will be discussed below.

² Although Richard Stack has the title "managing director" at Lehman Brothers, he does not exercise supervisory or managerial authority over subordinates and, like the others, is essentially a stock salesman.

Global Financial Press, is also a salesman. Two individuals are employed by public relations firms and act as consultants to clients of their firms. Neither has managerial positions within their firms.

However, Lawrence E. Turtle is the owner of Fiscal Advisors, Inc., which employs various individuals. Robert Farmer is a member of the Executive Committee of the International Data Group and exercises managerial and supervisory authority within the firm. Accordingly, both of them are employers or employer representatives within the meaning of the *Rules* and may not make campaign contributions to candidates for IBT International office. Advisory pages 11-12.

The protest contends that all of these individuals and/or firms by whom they are employed provide services to employee benefit plans (pension or health and welfare plans) of which Local 237 members are beneficiaries. Mr. Scott suggests that it is inappropriate for Mr. Feinstein to accept campaign contributions for employees of such service providers. Mr. Scott contends that receipt of these contributions would violate the prohibitions contained in 406(b)(3) of the Employee Retirement Income Security Act ("ERISA") which prohibits a benefit plan trustee from receiving consideration for his personal account from any party dealing with a benefit plan.³

During the course of the investigation, Mr. Scott's counsel argued that the acceptance of these contributions would constitute a breach of Mr. Feinstein's fiduciary responsibility to any plan for which he is a trustee. Neither Mr. Scott nor his counsel provided information which linked the non-managerial, non-supervisory employee-contributor to any fund to which Mr. Feinstein owed a fiduciary duty. The Election Officer's investigation has not revealed that any contribution at issue constitutes a breach of Mr. Feinstein's fiduciary duty. For the Election Officer to initiate a broad investigation into Mr. Feinstein's obligations under ERISA, or any similar fiduciary obligation, is beyond the scope of this protest and the Election Officer's mandate.

III. Attorneys

Seven individuals listed in the protest are attorneys. Of these attorneys, all are employed by law firms. Six are partners and one is an associate. Of the six who are partners, none is a managing partner or otherwise participates in a group or committee which controls or governs the firms.

The Advisory (at page 12) draws a distinction between employees who have authority to formulate or effectuate management policies as opposed to those who may

³ Mr. Scott concedes that the benefit plans at issue are not covered by ERISA, but argues that the same fiduciary obligation should apply.

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have professional skills but whose effectuation of policy is limited to discretionary application of their professional skills. The Advisory states that an associate of a law firm will not be considered a managerial employee. Thus, Mr. Feinstein's receipt of a campaign contribution from an associate attorney is not prohibited.

The status of partners of law firms who do not participate in the formulation of management policies presents a closer question. While partners may share in the ownership of the law firm to some degree, if they are not managing partners or if they do not participate in decisions governing the management of the law firm, their status as partners may best be analogized to shareholders. Shareholders are "owners" of corporations who do not formulate or control corporate policies. Shareholders are not prohibited from making campaign contributions simply by virtue of their ownership/shareholder status.

Similarly, the status of being a partner of a law firm, *per se*, is not determinative of the question of whether a partner is managerial or supervisory for purposes of the Advisory. As noted in the Advisory at page 13, the presumption that a partner in a law firm is *per se* a managerial or supervisory employee—and thus, an employer representative within the meaning of the *Rules*—is rebuttable. The presumption may be rebutted by showing that the partner exercises no managerial or supervisory authority on behalf of his/her firm and that his/her campaign contribution was neither made at management's behest nor would be treated by IBT members as being so made. NLRB v. National Apartment Leasing Company, 726 F2d 967 (3rd Cir., 1984).

None of the six attorneys who are partners in law firms are managing partners or otherwise participate in the formulation of management decisions or policies. None of their firms provide legal services to any Union entity or benefit fund with which Mr. Feinstein is affiliated. Under these circumstances, Mr. Feinstein's receipt of contributions from them does not violate the Advisory.

Mr. Scott argues with respect to these attorneys, as he argued with respect to the financial and public relations personnel who made contributions to Mr. Feinstein, that the campaign contributions are prohibited since he claims that the attorneys or their firms provide services to benefit plans in which members of Local 237 participate. The information obtained in the Election Officer's investigation does not support this allegation. Even assuming the allegation was correct, for the same reasons as discussed *infra*, the Election Officer finds that under the circumstances of this case, that campaign contributions made by these attorneys are not prohibited under the *Rules*.


In sum, this protest is GRANTED with respect to the contributions of Don Meyers, Barry Liebowitz, Lawrence Turtle, and Robert Farmer. Subsequent to the filing of this protest on or about December 3, 1991, Mr. Feinstein returned to these four

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individuals the campaign contributions received from them; the Election Officer has received documentation that the contributions have been returned. Such action is sufficient to remedy the violation found to have occurred. In Re R. L. Communications, Election Office Case No. P-284-IBT, reversed on other grounds, 91-Elec. App.-194.

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, 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 (also via facsimile)

Amy Gladstein, Regional Coordinator

Ron Carey
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