

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

Michael H. Holland
Election Officer

(202) 624-8778
1-800-828-6496
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January 2, 1992

VIA UPS OVERNIGHT

Michael Caffrey
2719 Brown Street
Brooklyn, New York 11235

William A. Ferchak
Trustee
IBT Local Union 295
179-30 - 149th Avenue
Jamiaca, New York 11434

Re: Election Office Case No. P-1125-LU295-NYC

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Michael Caffrey, a member of Local Union 868. Mr. Caffrey contends that in retaliation for his distribution of campaign material on behalf of Ron Carey and the Ron Carey Slate to the membership of Local 295 he was threatened, intimidated and that his personal vehicle was damaged by the Trustee and/or members of Local 295. The protest was investigated by Amy Gladstein, Regional Coordinator.

At the instigation of the Independent Administrator Frederick B. Lacey, Local 295 was placed in trusteeship by the International Union. William A. Ferchak was appointed by the International to serve as the Trustee. On Sunday, November 24, 1991, a special ratification meeting was scheduled by the Trustee to permit Local 295 members to vote upon a proposed collective bargaining agreement between Local 295 and Airborne Freight.

Mr. Caffrey, who is neither a member of Local 295 nor employed by Airborne Freight, was at the Union Hall of Local 295 at the date and time of the scheduled special ratification meeting. He arrived at approximately 8:30 a.m., put up posters for then-General President candidate Ron Carey and the Ron Carey Slate and remained in his personal vehicle until Local 295 members began arriving at the Local Union Hall. When members arrived Mr. Caffrey proceeded to provide them with campaign materials on behalf of Mr. Carey and his slate.

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At or about 10:00 a.m. Stephen Kindred, a former member of the IBT and presently a part-time employee of Teamsters for a Democratic Union ("TDU") arrived at Local 295's building. Mr. Kindred distributed a leaflet prepared by TDU urging the members of Local 295 to reject the proposed collective bargaining agreement between the Local and Airborne Freight. After Mr. Kindred's arrival, Mr. Caffrey distributed literature with Mr. Kindred, Mr. Kindred handing out the leaflet about the proposed collective bargaining agreement and Mr. Caffrey distributing campaign literature on behalf of Ron Carey and the Ron Carey Slate.

At or about 10:45 a.m., Mr. Caffrey states that he was approached by a man wearing a black Local Union 295 jacket with the name "Big Al" written on the front of the jacket, who told Mr. Caffrey that Mr. Ferchak wanted to see Mr. Caffrey inside the Local's Union Hall. Neither Mr. Caffrey nor Mr. Kindred could otherwise identify the individual and the Election Officer's investigation has been unable to locate or identify the person that Mr. Caffrey states approached him on November 24, 1991 outside the Local's Hall.

Messrs. Caffrey and Kindred entered the Union Hall through a back entrance into a kitchen or kitchenette located within the Hall. Mr. Ferchak and other Local 295 members were present in the kitchenette, drinking coffee, eating bagels and apparently preparing for the contract ratification vote.¹

Exactly what was said after Messrs. Caffrey and Kindred entered the kitchen area of the Hall is a matter of some dispute. Everyone agrees that some conversation took place, primarily between the trustee, William Ferchak, and Mr. Kindred. Everyone also agrees that the conversation related primarily, if not exclusively, to the leaflet concerning the ratification of the collective bargaining agreement that Mr. Kindred was distributing. Mr. Kindred also claims that Mr. Ferchak referred to Mr. Caffrey's campaigning on behalf of Ron Carey and the Ron Carey Slate, referring to Mr. Carey by an obscenity. No other testimony supports Mr. Kindred's claim and Mr. Kindred himself admits that the reference by Mr. Ferchak to the International Union officer campaign activities was short.

There is general agreement that Mr. Ferchak objected to the distribution of the leaflet urging that the proposed collective bargaining agreement between Local 295 and the Airborne Freight be rejected, stating that there should have been prior contact with

¹ The Election Officer's investigation was unable to verify the exact number of individuals present in the kitchenette when Messrs. Caffrey and Kindred entered the area. Mr. Caffrey contends that there were six to eight persons present. Mr. Kindred states that there were seven persons present and one of the members present claims there were a dozen persons in the kitchenette.

him. Messrs. Kindred and Caffrey contend that Mr. Ferchak's statements were laced with obscenities while others present contend that the language used constituted the usual type of talk with no abnormal cursing. The Election Officer is aware that language used among and between Union members does not always conform to Victorian standards.

Messrs. Caffrey and Kindred contend that Mr. Ferchak threatened that he would "bring them up on charges" and "pull their Union cards." They state that Mr. Ferchak offered to go out in the parking lot and dance, i.e., fight, with them to settle the issue relating to the collective bargaining agreement. No internal Union charges have been filed, no attempt has been made to remove Mr. Caffrey from membership in the IBT, and no fight ensued between Mr. Ferchak and Mr. Kindred or Mr. Caffrey or any other person.²

Messrs. Kindred and Caffrey then left the Union Hall and continued distributing their literature to Local 295 members outside the Local Union Hall until approximately 1:00 p.m. At about 12:00 noon, Mr. Caffrey drove his car to a diner located a few blocks from the Union Hall to get coffee for himself and Mr. Kindred. He states that several men he had seen outside the Union Hall, including "Big Al" were inside the diner. After Mr. Caffrey left the diner and returned to his vehicle, he found that one of his tires had been cut.

Mr. Kindred claims that he and Mr. Caffrey were harassed by members of the Local outside the Local Union Hall during the period that they were distributing literature. He claims that the members told him that they had no business being there, had no stake in the contract ratification vote and that Mr. Carey was a scab. He also claims that the members wadded up leaflets handed them by himself and Mr. Caffrey and threw the wadded-up leaflets at them. While the *Rules* provide that all IBT members have the right to participate in the International Union officer election campaign, including leafletting for the candidates of their choice, neither the *Rules* nor the Election Officer can force IBT members to agree with the campaigners nor prevent them from making unflattering remarks about the campaigners' favored candidates. There are no allegations that either Mr. Kindred or Mr. Caffrey were assaulted while they were distributing their leaflets outside the Local Union Hall.

At or about 1:00 p.m., after the number of members outside the Local Union Hall diminished, Messrs. Kindred and Caffrey left. Mr. Kindred claims that they did so because of their concern that they might be physically assaulted by the members

² The Election Officer would note that Mr. Kindred, not being a member of the IBT, is not subject to internal Union charges nor may he be deprived of membership in the Union.

remaining, given the small number of members remaining and the concomitant absence of witnesses. The contract ratification vote continued until 3:00 p.m. and Mr. Kindred contends that he and Mr. Caffrey were unable to distribute literature to approximately 200 members who arrived at the Local Union Hall after 1:00 p.m. It should be noted, however, that both causes being espoused by Messrs. Kindred and Caffrey were successful. The proposed collective bargaining agreement between Local 295 and Airborne Freight was rejected and Mr. Carey and all candidates on the Ron Carey Slate were successful in the recently concluded 1991 IBT International Union officer election.

There is no direct evidence implicating Trustee Ferchak or any member of Local 295 in the damage done to Mr. Caffrey's tire. Neither is there any clear and convincing evidence that Mr. Caffrey or Mr. Kindred will be or could be subject to adverse action by Mr. Ferchak in retaliation for their International Union officer campaign activities. However, both Messrs. Kindred and Caffrey have been active advocates and campaigners for Ron Carey and the Ron Carey Slate, espousing an electoral position not endorsed by Local Union 295 or Mr. Ferchak. Under these circumstances, and given the proximity of time and place of particularly the damage to Mr. Caffrey's vehicle and the campaign activities being conducted by Mr. Caffrey, Local 295 must make it clear that such activity cannot be tolerated and that all IBT members may freely, openly and actively participate in campaign activities pursuant to the *Rules* without fear of personal or property harm or intimidation.

Accordingly, the attached memorandum is to be posted by Local 295 on all Local Union bulletin boards and is to be read by the Presiding Officer at the next Local 295 membership meeting. See Election Office Case No. P-800-LU135-SCE and Election Office Case No. P-352-LU769-SCE, affirmed 91-Elec. App.-76. Mr. Ferchak, as the Local 295 Trustee, shall submit an affidavit within ten (10) days of the date of this decision demonstrating that the posting has been accomplished and noting the date of the next Local 295 membership meeting. The officer presiding at the next scheduled Local Union membership meeting shall submit an affidavit within three (3) days of the date of such meeting demonstrating that the attached memorandum was read to the membership at the meeting.

The protest is decided in accordance with the foregoing.³

³ Mr. Caffrey's letter also complains about the new negotiations between Local 295 and Airborne Freight and ratification of any collective bargaining agreement so negotiated. These matters are beyond the jurisdiction of the Election Officer, *Rules*, preamble at pages 1-2, as is the contention that William A. Ferchak should be replaced as the Trustee of Local 295. The Election Officer understands that these matters may be within the jurisdiction of the Independent Administrator and notes that a copy of the protest letter was mailed to Independent Administrator Frederick B. Lacey

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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. 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

Steve Kindred
c/o NY/NJ Teamsters for a Democratic Union
500 State Street
Brooklyn, New York 11217

simultaneously with its being sent to the Election Officer.

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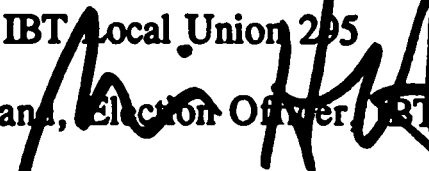
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MEMORANDUM

To: All Members of IBT Local Union 295
From: Michael H. Holland, Election Officer, IBT
Re: Protected Activities



Local 295 has posted and is reading this memorandum at the Local's membership meeting to clarify and emphasize that all members of the IBT are entitled to participate freely and fully in all International Union officer elections without harassment, intimidation or fear of personal or property harm. During the November 24, 1991 special contract ratification meeting, the tire of the vehicle of an IBT member who was engaged in International Union campaign activities among Local 295 members participating in the ratification vote was damaged. Such action is totally inappropriate and will not be tolerated or permitted by Local 295. Such activity and all like or related-activities, including any type of threat or coercion against any IBT member, will be prosecuted to the full extent possible, both internally within the Union by referral to Charles Carberry, the court-appointed Investigation Officer, and by outside law-enforcement authorities.

This is an official notice which must remain posted for a period of not less than 45 days from the initial date of posting. This notice must not be defaced or altered in any manner and must not be covered over with any other material.