

OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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Michael H. Holland
Election Officer

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February 13, 1992

VIA UPS OVERNIGHT

Dominick J. Mangano
361 Concord Drive
Melrose Park, IL 60160

Daniel C. Ligurotis
Secretary-Treasurer
IBT Local Union 705
300 South Ashland Ave.
Chicago, IL 60607

Re: Election Office Case No. P-1126-LU705-CHI

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Dominick Mangano. Mr. Mangano is employed by the Central Conference of Teamsters and was a member of IBT Local Union 705 and a participant in its pension and health and welfare plans. Mr. Mangano alleges that he was discriminated against by Local Union 705, issued a withdrawal card and removed from participation in the pension and health and welfare plans in retaliation for his support of R.V. Durham, a candidate for General President of the IBT. This protest was investigated by Adjunct Regional Coordinator Deborah Schaaf.

Mangano has been a member of Local Union 705 since 1953. Mr. Mangano was laid off from his job with an employer which was party to a collective bargaining agreement with Local Union 705 when the employer went out of business in February, 1988. Prior to that date and pursuant to the collective bargaining agreement between his employer and Local 705, Mangano participated in the multi-employer pension plan as well as the health and welfare fund established by and between Local 705 and employers with collective bargaining relationships with Local 705.

Mr. Mangano had been active in Local Union 705 affairs, serving as a shop steward from 1960 until his layoff in 1988. In 1988 Daniel Ligurotis was both the Secretary-Treasurer of Local Union 705 and the Director of the Central Conference of Teamsters. After his layoff, Mangano approached Ligurotis for a job. In September, 1988, Mangano was hired by Ligurotis into an administrative position with the Central Conference and is currently employed as its Director of Research.

At the time he was hired by the Central Conference, Mangano informed Ligurotis that he intended to work until age 65, i.e., until November, 1994, and that he wanted to continue his participation in the Local Union 705 pension plan. The Local Union 705 pension plan and the health and welfare plan are multi-employer pension plans which

permit participation solely by employees of Local Union 705 and its two multi-employer plans and employees covered by collective bargaining agreements with Local Union 705. As an employee of the Central Conference of Teamsters, Mangano was not entitled to participate in the Local Union 705 plan. In addition, when Mangano was hired by the Central Conference, Local Union 705 did not represent, or have collective bargaining agreements covering, any employees of the Central Conference. Accordingly, Mangano would not have been eligible to participate in either the pension or health and welfare plan.

In order to ensure that Mangano would continue to accrue service credits under the Local Union 705 pension plan, Ligurotis as Director of the Central Conference entered into a collective bargaining agreement on behalf of the Central Conference with Local Union 705, of which Ligurotis was the principal executive officer, covering only Mangano. The agreement between the Central Conference and Local 705 was in labor parlance a "me-too" contract; that is, the Central Conference, agreed to be bound by the terms of the contract between Local 705 and the Illinois Trucking Association, Inc. and Trucking Management, Inc., although the Central Conference is neither a trucking company nor an association member. However, this "me-too" agreement incorporated only certain terms of the multi-employer agreement between Local Union 705 and the Illinois Trucking Association, Inc. and Trucking Management, Inc. The only substantive benefit provided by the contract to Mangano was his coverage under the multi-employer pension and health and welfare plans. All other terms of Mangano's employment, e.g., hours, wages, etc., were the same as other similarly situated Central Conference employees not covered by any collective bargaining agreement.

The expiration date of the multi-employer agreement, and thus the individual agreement covering Mangano was March 31, 1991. The collective bargaining agreement covering Mangano has not been renewed. ✓

In the fall of 1990, Ligurotis was removed as Director of the Central Conference by the then-IBT General President McCarthy. Mr. Ligurotis continues to serve a Secretary-Treasurer of Local Union 705. On September 10, 1991, Mangano accompanied then-IBT General President candidate R.V. Durham at a campaign appearance before Joint Council 25. Mr. Durham was, of course, opposed in his candidacy by Walter Shea, with whom Ligurotis ran for General Secretary-Treasurer on the Shea-Ligurotis Action Team. Mr. Ligurotis, as an official of Joint Council 25, saw Mangano accompany Durham at the event. After the September 10 appearance Mangano campaigned on behalf of the R.V. Durham ticket on at least two other occasions.

By letter dated November 21, 1991, Ligurotis, acting in his capacity as Secretary-Treasurer of Local Union 705, informed the Central Conference of Teamsters that Local Union 705 disclaimed any interest in further representing the employee of the Central

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Conference covered by the collective bargaining agreement that expired on March 31, 1991, i.e., Dominick Mangano. On November 23, 1991, Mangano received an honorable withdrawal card issued by Local Union 705. On November 25, 1991, Mangano filed the instant protest. He also filed an appeal to Joint Council 25 challenging the issuance of the withdrawal card by Local Union 25. The appeal to Joint Council 25 is currently pending.

Mr. Mangano's protest raises two separate claims. First, Mangano alleges that Local Union 705's failure to renew the collective bargaining agreement which provides for his continued participation in the Local Union 705 pension plan, and the Local Union's disclaimer of continued interest in representing him for collective bargaining purposes, was discriminatory because of his support of candidate R.V. Durham. Mangano further contends that the issuance of the withdrawal card by Local Union 705 was in retaliation for his campaign activity.

Local Union 705 argues that the only way that Mangano was entitled to continue to participate in the Local Union 705 pension plan as an employee of the Central Conference would be pursuant to a collective bargaining agreement between Local Union 705 and the Central Conference. Because at the time Mangano was hired Ligurotis was the principal officer of both Local Union 705 and the Central Conference, Ligurotis was willing, and able, to do Mangano a favor by executing an agreement the sole purpose of which was to ensure Mangano's continued participation in the pension plan. However, since Ligurotis is no longer the principal officer of the Central Conference, Mangano is "no longer his problem."

The fact that Ligurotis was no longer in a position of authority in the Central Conference may explain why the agreement covering Mangano was not renewed after its expiration on March 31, 1991. Mr. Mangano was not an active supporter of R.V. Durham prior to September, 1991, and as a result there is no basis for concluding that the failure to renew the agreement was politically motivated. A more likely explanation is that after Ligurotis was removed from his position with the Central Conference he was no longer interested in doing a favor for one of its employees. However, this lack of concern for an employee of the Central Conference or the belief that Mangano "was no longer his problem" does not explain Local Union 705's disclaimer of interest in any further representation of Mangano contained in its November 21, 1991 letter to the Central Conference. This disclaimer came soon after Mangano's public campaigning on behalf of R.V. Durham and at the high point of the International Officer election campaign. Moreover, coupled with the Local Union's contemporaneous issuance of a withdrawal card to Mangano, it appears that the disclaimer of interest was politically motivated. Retaliation against Mangano because of his campaign activity is violative of the *Rules*.

With respect to the issuance of the withdrawal card, the Local Union argues that was its action was lawful and in accordance with Article XVIII, Section 6(a) of the IBT Constitution. That provision of the IBT Constitution requires Local Unions to issue honorable withdrawal cards to members who have been not employed within the jurisdiction of the Local Union for a period of six months or more. Local 705 argues that since Mangano has not been covered by a collective bargaining agreement with Local Union 705 since March 31, 1991, he has not been employed in the jurisdiction of the Local Union for a period of greater than 6 months. However, Article II, Section 4(c) of the IBT Constitution provides that:

All officers and full-time employees of the International Union and any affiliate (excepting licensed, professional personnel employed as such) shall be considered as meeting the requirement of working at the craft within the jurisdiction for the purpose of retaining active membership. . .in a Local Union in which he is a member. . .

As a full time employee of the Central Conference of Teamsters, an affiliate of the IBT, Mangano meets the working at the craft requirement for maintaining active membership in Local Union 705. Therefore, Local Union 705 had no authority to involuntarily issue the withdrawal card. Since the Election Officer finds that the issuance to Mangano of a withdrawal card was politically motivated, in retaliation for Mangano's partisan position during the 1991 IBT International Union officer election, the issuance violates the *Rules*.

Having found that the Local Union's disclaimer of interest of continued representation of Mangano was politically motivated in violation of the *Rules*, the Election Officer is obliged to impose an appropriate remedy. However, the Election Officer cannot compel, under the *Rules* or the Consent Order, Local Union 705 to engage in collective bargaining or to enter into a collective bargaining agreement with the Central Conference on Mangano's behalf. Under federal labor law, a union may disclaim interest in representing a unit of employees at any time. The consent order does not modify this principle. See, e.g., Paragraphs 12(B)(ii) and 18(c) of the Consent Order. Similarly, the Election Officer has no authority to require the Local Union 705 pension fund to recognize Mangano as a bona fide participant or to accept contributions on his behalf where such actions would be violative of the terms of the plan. See, e.g., Paragraph 18 (c) of the Consent Order.

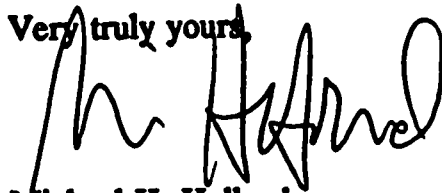
Local Union 705's issuance of a withdrawal card to Mangano, like its disclaimer of interest in continuing to represent him, was motivated by hostility to Mangano's campaign activity on behalf of R.V.Durham. However, unlike the Local Union's disclaimer of interest in representing him as his exclusive bargaining agent--and negotiating a contract with the Central Conference on his behalf--the refusal of Local

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705 to permit Mangano to remain a member is subject to an effective remedy. The Local Union is hereby ordered to void the withdrawal card issued to Dominick Mangano, to accept his tender of membership dues and --upon such a tender--afford him all rights and privileges of a member of Local 705. Within five days if the date of this decision, Local 705 shall submit an affidavit to the Election Officer demonstrating that the withdrawal card has been voided.

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

cc: **Frederick B. Lacey, Independent Administrator, IBT**
Deborah Schaaf, Esq. Adjunct Regional Coordinator
Sherman Carmell, Esq.

pension plan in retaliation for his campaign activity on behalf of R.V. Durham in the recent IBT International Union Officer election.

Mr. Mangano was an active member of Local 705 from 1953 until February 1988 when his employer, a trucking firm whose employees were represented by Local 705, went out of business. Until his layoff in 1988, Mr. Mangano was a participant in a pension, health and welfare plan (the "Plan") established pursuant to a Multi-Employer Association Collective Bargaining Agreement entered into between Local 705 and various employers.

After his layoff, Mr. Mangano asked Mr. Ligurotis for a job and Mr. Ligurotis hired him as Director of Research with the Central Conference. In an effort to preserve all of his accumulated years of pension credit, Mr. Mangano also asked to remain as a participant in the Plan.¹

There are only two categories of employees who are eligible to participate in the Plan. Participants must be either employees of Local 705, or covered by the Multi-Employer Association Collective Bargaining Agreement. Mr. Mangano is not an employee of Local 705; as noted, he works for the Central Conference. The Central Conference does not participate in the Multi-Employer Association Collective Bargaining Agreement. Thus, Mr. Mangano was not eligible to remain in the Plan.

¹ By switching to the Central Conference pension plan for which he was eligible, Mr. Mangano believed that some of his pension credits would be lost. If this were true, it would result in Mr. Mangano receiving a reduced pension.

To accommodate Mr. Mangano, Mr. Ligurotis used his position as Director of the Central Conference and principal officer of Local 705 to arrange for Mr. Mangano to remain in the Plan during his employment with the Central Conference. The arrangement struck has been described as a "me too" contract that tracked the pension plan provisions of Local 705's Multi-Employer Association Collective Bargaining Agreement then in effect.

In the fall of 1990, William McCarthy, then IBT General President, removed Mr. Ligurotis as Director of the Central Conference. The Multi-Employer Association Collective Bargaining Agreement expired on March 31, 1991, but its terms continued in effect until a new agreement was signed in November of 1991.

In September of 1991, while Mr. Ligurotis was a candidate for International Union Vice President on the slate headed by Walter Shea, Mr. Mangano openly campaigned for a rival candidate, R.V. Durham. Mr. Ligurotis was aware of Mr. Mangano's support for the rival slate of candidates.

On November 21, 1991, Mr. Ligurotis, in his capacity as the principal officer of Local 705, sent a letter to the Central Conference disclaiming any interest in further representing Mr. Mangano. The payments that Local 705 had been making on Mr. Mangano's behalf into the Plan ceased at that time. On November 23, 1991, Local 705 also issued Mr. Mangano an involuntary withdrawal card.

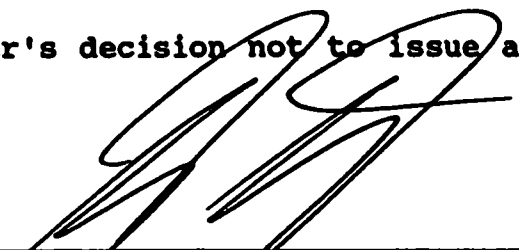
Upon investigation, the Election Officer concluded that Mr. Ligurotis and Local Union 705 had impermissibly retaliated against

Mr. Mangano for engaging in campaign activity that was protected under Article VIII, Section 10.a of the Election Rules. Finding that the withdrawal card was improperly issued, the Election Officer directed Local 705 to retroactively reinstate Mr. Mangano as a Local Union member. Local 705 has not challenged the Election Officer's decision and has indicated that it would comply with the directive.

In addition, while the Election Officer found that the action taken regarding Mr. Mangano's participation in the Plan was also retaliatory in nature, the Election Officer declined to impose any remedy on that issue. On this appeal, Mr. Mangano challenges the Election Officer's refusal to grant a remedy regarding his participation in the Plan.

Mr. Mangano's continued eligibility in the Plan was arbitrarily contrived by an arrangement of questionable validity as a personal favor from Mr. Ligurotis to Mr. Mangano. Mr. Mangano wants to be returned to his special position despite the fact that he bit the proverbial hand that was feeding him. The scope of protection afforded by the Election Rules simply does not reach this far.

Accordingly, the Election Officer's decision not to issue a remedy is affirmed.



Frederick B. Lacey
Independent Administrator
By: Stuart Alderoty, Designee

Dated: March 3, 1992

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA, :

Plaintiff, :

-v- :

ORDER

INTERNATIONAL BROTHERHOOD OF :
TEAMSTERS, CHAUFFEURS, :
WAREHOUSEMEN AND HELPERS OF :
AMERICA, AFL-CIO, et al., :

88 CIV. 4486 (DNE)

Defendants. :
-----X

IN RE: PETITION FOR REVIEW OF :
DECISION 91-ELEC. APP.-251 (SA) :
OF THE INDEPENDENT ADMINISTRATOR :
-----X

EDELSTEIN, District Judge:

WHEREAS petitioner Dominick J. Mangano appeals the Independent Administrator's decision in Election Appeal 91-Elec. App.-251 (SA), which affirmed the Election Officer's decision in Case No. P-1126-LU705-CHI; and

WHEREAS the Independent Administrator affirmed both (1) the Election Officer's finding that Mangano was improperly retaliated against for engaging in campaign activity protected under Article VIII, §10(a), of the Election Rules, and (2) the Election Officer's decision to direct Local 705 to retroactively reinstate Mr. Mangano as a Local Union member; and

WHEREAS the Independent Administrator found that the Election Officer properly concluded that he did not have the authority to reinstate Mangano in a pension, health and welfare plan ("the Plan") in this case as part of the remedy; and

WHEREAS the Independent Administrator found that Mangano's eligibility for the Plan was arbitrarily contrived by an arrangement of questionable validity as a personal favor to Mr. Mangano; and

WHEREAS Mangano contests only the portion of the Independent Administrator's decision which refuses to reinstate him in the Plan; and

WHEREAS the decisions of the Independent Administrator "are entitled to great deference." United States v. Int'l Brotherhood of Teamsters, 905 F.2d 610, 616 (2d Cir., 1990), aff'g March 13, 1990 Opinion & Order, 743 F. Supp. 155 (S.D.N.Y., 1990); and

WHEREAS this Court will overturn findings of the Independent Administrator when it finds that they are, on the basis of all the evidence, "arbitrary and capricious." United States v. Int'l Brotherhood of Teamsters, 905 F.2d at 622; and

WHEREAS upon review, the determination of the Independent Administrator that Mangano not be reinstated in the Plan is fully supported by the evidence and is neither arbitrary nor capricious;

IT IS HEREBY ORDERED that the Independent Administrator's decision in Election Appeal 91-Elec. App.-251 (SA), which affirmed the Election Officer's decision in Case No. P-1126-LU705-CHI, is affirmed in all respects.

SO ORDERED.

Dated: *April 7, 1992*
New York, New York

William E. Curtis

U.S.D.J.