

OFFICE OF THE ELECTION OFFICER
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Michael H. Holland
Election Officer

January 29, 1991

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VIA UPS OVERNIGHT

Barry L. Clark
5893 Crescent Ave.
Buena Park, CA 90620

Richard D. Martino
Secretary-Treasurer
IBT Local 420
1221 N. Peck Rd. So.
El Monte, CA 91733

Re: Election Office Case No. P-221-LU420-CLA

Gentlemen

Two pre-election protests were filed by Mr. Clark pursuant to Article XI, § 1 of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*"). On January 14, 1990, the Election Officer notified the parties that the protests had been consolidated.

The first protest concerns Mr. Clark's request to inspect and make notes from the collective bargaining agreement and obtain a worksite list. The Local Union has provided an employer work site list from Local 420 on January 22, 1991. Thus the Election Officer has approved Mr. Clark's withdrawal of this protest.

The second protest concerns alleged inappropriate conduct by the Local Union Secretary-Treasurer purportedly in violation of Article VIII, § 10 of the *Rules*. The investigation conducted by the Election Officer revealed the following facts:

On January 11, 1991 Barry Clark and Ralph Yager, both members of Local 420, went to Local 420's office at 1221 N. Peck Road, S. El Monte, California 91733 for the purposes of obtaining information on employer addresses. Mr. Clark had previously scheduled a 1:00 p.m. meeting that day with Richard Martino, Secretary-Treasurer, Local 420, for the purposes of inspecting and making notes from the collective bargaining agreements. Mr. Clark and Mr. Yager arrived at the Local Hall at approximately 12:40 and sat down to wait for Mr. Martino.

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While waiting for Mr. Martino, an unidentified man who had been standing at the counter inquiring about his retiree benefits, approached Mr. Clark and Mr. Yager, and asked them what they were doing at the hall. Both responded that they were running as delegates to the IBT convention. Neither Mr. Clark nor Mr. Yager were distributing campaign literature or engaged in the solicitation of any persons at the business counter.

As the three men were standing talking, Mr. Martino came down the stairs and began listening to the conversation. Mr. Martino listened briefly and then told the three individuals to stop because their campaigning activity was interfering with the conduct of business at the counter. Mr. Clark and Mr. Yager also state that Mr. Martino went on to inform them that campaigning on Union property was not permitted.

The investigation undertaken by the Election Officer indicates a discrepancy exists between Mr. Clark and Mr. Yager and Mr. Martino concerning where Messrs Clark and Yager were standing when they became engaged in the above conversation with the unidentified member. Both Mr. Clark and Mr. Yager maintain that they were standing approximately ten (10) feet from the business counter, and that they were not interfering with the conduct of business at the Hall.

Conversely, Mr. Martino asserts that when he descended the stairs into the reception area Mr. Clark was standing at the counter talking to the unidentified man about the delegates campaign. Neither of the parties dispute the fact that the exchange lasted only a moment and that both parties then went into Mr. Martino's office to begin the meeting. Although a factual dispute exists concerning whether Mr. Clark and Mr. Yager were standing directly next to, or ten feet from the business counter, it is not necessary to resolve the dispute in order to rule on Mr. Clark's protest.

Article VIII, § 10(a) of the *Rules* provides that all IBT members retain the right to participate in campaign activities. This includes the right to engage in discussions with other members concerning individual candidacies and campaign issues. While the Rules do not require a Local Union to permit campaigning in a Local Union Hall or office, the "campaigning" here at issue, was at most, incidental, and thus not violative of the *Rules*. See Article VIII, § 10(a) of the *Rules*. Therefore, Mr. Clark's conduct did not violate the *Rules*.

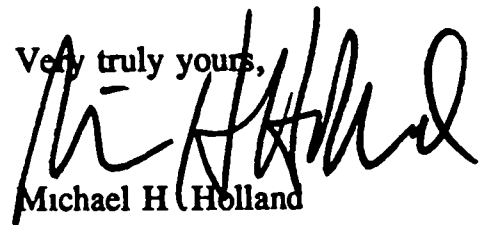
However, the Local Union need not permit campaigning in the Union Hall where no such campaigning had previously been permitted. Article VIII, §§ 4 and 10 of the *Rules*. Therefore Mr. Marino also did not violate the *Rules* by asking Mr. Clark to cease his discussion.

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The protests are resolved on the foregoing 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, 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/ads

cc Frederick B Lacey, Independent Administrator
Geraldine Leshin, Regional Coordinator

I will first address the issue of Barry Clark's request for the worksite lists.

Article VIII, Section 1. of the Rules permits delegate candidates to inspect, and make notes from, collective bargaining agreements covering the members of the Local Union. Section 1.c. allows, but does not require, Local Unions to comply with a request to inspect collective bargaining agreements by providing a list of worksites, complete with addresses, of its members.

In response to a December 12, 1990, request from Mr. Clark to inspect worksite lists the Local Union notified Mr. Clark in writing that he could make an appointment to inspect the Local's collective bargaining agreements. Apparently Mr. Clark filed a protest with the Election Office regarding his request. Subsequently on or about January 22, 1991, the Local Union provided Mr. Clark with the worksite lists.

On or about January 25, 1991, Mr. Clark advised the Election Office in writing that the worksite lists he received were "acceptable." Based on this information, the Election Officer concluded that the protest was withdrawn, and subsequently denied Mr. Clark's protest on the theory of mootness.

At the hearing before me, Mr. Clark requested that it be noted for the record that his protest had not been withdrawn, but merely resolved to his satisfaction. Because Mr. Clark gave no indication that he wished to revive his protest, and presented no evidence that would lead me to believe that the Local Union had unduly

delayed delivering the worksite lists, there is no further relief to which the protestor is entitled on this issue. Thus the Election Officer properly decided this issue.

I now turn to the issue of campaigning in the Local Union business offices. The Election Office here found no violation.

While Mr. Clark was waiting in the Local Union business office to meet with Mr. Martino, he began a conversation with another member at or near the business counter. Mr. Yager was also involved in the conversation. The discussion admittedly involved election matters, although the extent of the discussion is in dispute. Upon overhearing part of the discussion, Mr. Martino advised the three individuals that campaigning in the Local Union business office was not permitted, and asked them to refrain from this activity. They immediately complied with his request.

Subject to certain restriction, Article VIII, Section 10.a. of the Rules gives all IBT members the right to participate in campaign activities. This includes discussion with other members on campaign issues and candidates. Section 10.d. prohibits a Union from placing restrictions on members' pre-existing rights to solicit support or engage in similar campaign activities on Union premises.

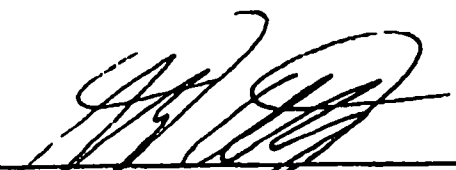
Section 10.d. also provides that Union facilities shall be made available on an equal basis to all candidates and members. However, this portion of Section 10.d. does not create any rights,

but merely ensures that "pre-existing rights" will be protected on a non-discriminatory basis.

There is no evidence that campaigning had been permitted in the Local Union business office prior to the incident with Mr. Clark and Mr. Martino. No further evidence to this effect was submitted at the hearing. In fact, Mr. Martino indicated that campaign activity is strictly prohibited at the Local Union's business office. This is to ensure that the members and their families who come to the Hall to conduct business, can do so undisturbed. Thus, there is no "pre-existing" right to discuss or engage in campaign activity in the Local Union business office.

The scope of the election-related discussion involved in the conversation halted by Mr. Martino remains in dispute. However, the fact that the election was being discussed at all constitutes campaign activity.

Accordingly, the Election Officer's decision is affirmed in all respects.



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

Date: February 6, 1991.