



OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
25 Louisiana Avenue, NW
Washington, DC 20001
(202) 624-8778
1 800 828 6496
Fax (202) 624 8792

Michael H Holland
Election Officer

Chicago Office
% Cornfield and Feldman
343 South Dearborn Street
Chicago, IL 60604
(312) 922 2800

February 27, 1991

VIA UPS OVERNIGHT

Bert Warashina
645 Kuana Street
Honolulu, HI 96816

Anthony A Rutledge VP
615 Puikoi Street
18th Floor
Honolulu, HI 96814

Re: Election Office Case No. P-483-LU996-RMT

Gentlemen

Complainant Bert T Warashina filed a pre-election protest pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") His protest concerns Anthony Rutledge who is candidate for delegate to the 1991 IBT International Convention from Local 996 The protestor contends that Mr Rutledge should be disqualified because he is purportedly an employer and a member and officer of a "rival" labor organization, Hotel and Restaurant Employees Local It is further alleged that Mr Rutledge encouraged employees represented by Local 996 to picket their employer in support of Mr Rutledge

Eligibility for being a candidate for delegate to the International Convention is covered in Article VI of the *Rules* The *Rules* in pertinent part require the candidate to be a member in good standing, with dues paid, be employed at the craft and be eligible to hold office if elected Article VI, § 1 (a)(3) In addition, Article II, §3(h) of the *Rules for the IBT International Union Delegate and Officer Election* provides that to be eligible for nomination, a member must be nominated and seconded by a member in good standing, each with his/her dues paid through the month prior to the nominations meeting

Mr Rutledge was nominated at the meeting by John Kalauawa, Soc Sec No 575-60-7991, and seconded by Beverly Reglos, Soc Sec No 575-38-7963 He was also nominated in writing by Valerie Kama, Soc Sec No 576-38-9621, and seconded

in writing by Melita Mar, Soc Sec No 575-50-8021 The dues payments histories for all of the above nominators and seconders show good standing status through January 1991 All above nominators and seconders are thus considered eligible

There is no allegation that Mr Rutledge is not a member in good standing of Local 996 Mr Rutledge's dues payment history reflects that his dues have been timely paid for the twenty-four months prior to the month of nomination The Election Officer has further verified that Mr Rutledge was an officer of Local 996 until January 1991 when he left office, having been defeated in a Local Union officer election which was conducted under the supervision of the United States Department of Labor Mr Rutledge was a candidate for Local Union office in that election and is protesting the conduct of that election and his apparent defeat before the Department of Labor The Department of Labor has refused to date to certify the results of the election

If Mr Rutledge had been a successful candidate in the Local Union officer election, he would be eligible to seek election as a delegate to the 1991 IBT International Convention *Rules*, Article VI, § 2 (g) He is actively pursuing an action to set aside the results of that election, he is actively pursuing his loss of employment as an officer of Local 996 Thus he meets the requirements of active employment at the craft *Rules*, Article VI, § 2 (b)

Neither the *Rules* nor the IBT Constitution prohibit a member from holding office in another labor organization Similarly, neither the *Rules* nor the IBT Constitution prohibit an employer from being a member or officer of the IBT See, e g , *Rules*, Article X, § 1 (a)(5) and IBT Constitution, Article II, § 2 (b) and (c) ¹

Thus the protest is DENIED

Any interested party not satisfied with this determination 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

¹ The issue of alleged disloyalty raised in the protest is properly determined through the processes of the IBT Constitution relating to the filing of charges against members and officers

Page 3
Bert T Warashina

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,

A handwritten signature in black ink, appearing to read "Michael H. Holland". The signature is stylized and cursive, written over the typed name.

Michael H Holland

MHH/mca

cc Frederick B Lacey, Independent Administrator
Bruce Boyens, Regional Coordinator

IN RE:

BERT T. WARASHINA,
Complainant,

and

ANTHONY A. RUTLEDGE,
IBT LOCAL UNION NO. 996,
Respondents.

996/RMT

XMH
BJH
JS

DECISION OF THE
INDEPENDENT
ADMINISTRATOR

MAR 12 1991

This matter arises out of an appeal from a February 27, 1991, decision of the Election Officer in Case No. P-483-LU996-RMT. The complainant, Bert T. Warashina, provided a written submission setting forth his position. The respondent, Anthony A. Rutledge, did not make himself available for the hearing, although he received fair notice. Barbara Hillman, of the Election Office, did appear at the scheduled hearing by way of telephone conference.

WORKING AT THE CRAFT

Mr. Warashina, a member of IBT Local 996 in Hawaii, alleges that Mr. Rutledge is ineligible to run for delegate to the 1991 IBT International Convention on behalf of Local 996 because he has not worked "at the craft" for the period required by the Rules For The IBT International Union Delegate And Office Election (the "Election Rules"). Article VI, Section 1.a. of the Election Rules provides that to be eligible to run for the position of delegate an individual must be: (1) in continuous good standing as a member of the Local Union, with dues timely paid for twenty-four consecutive

months prior to the nominations meeting;¹ (2) employed at the craft within the jurisdiction of the Local for the same twenty-four month period; and (3) eligible to hold the position if elected. Article VI, Section 2.g. of the Election Rules further provides that officers of a Local Union shall be deemed to have satisfied the working "at the craft" requirement for purposes of eligibility for office for a delegate or alternate delegate position. These rules are in accordance with the IBT Constitution. See Article II, Sections 4(a)(1) and 4(e) of the IBT Constitution.

Mr. Rutledge was employed by Local 996 as a Business Agent, part-time, until December 31, 1990. He also held the office of Vice President for many years. In or about October 1990, Mr. Rutledge ran unsuccessfully for President of Local 996 in an election supervised by the Department of Labor ("DOL"). Subsequently, challenges and/or complaints concerning the election were filed by the DOL. The DOL undertook an investigation that is apparently pending at the present time. Although Mr. Rutledge's opponent was installed as President in December of 1990, the results of the election have not been certified by the DOL, nor has the DOL ordered a new election.

Regarding the "working at the craft" requirement, the Election Officer states in his Summary:

Mr. Rutledge's position as Vice President satisfied his working at the craft requirement until the election for President in October-November 1990. [His employment as Business Agent would not satisfy the requirement as it

¹ The nominations meeting for Local 996 was held in February 1991.

was not a full time position. See Rules, Art. VI, § 2(g).] Because the outcome of that election is contested and undergoing investigation by the Department of Labor, Mr. Rutledge's status is not entirely clear at this time.

Under the Rules and the IBT Constitution, Mr. Rutledge would have satisfied the working at the craft requirement to run for a delegate position by holding office in Local 996 -- whether the office of Vice-President, President or a combination of both -- for the requisite 24-month period. If he is deemed to have left office on the date of the supervised Local Union officer election in October or November, or the date of the subsequent installation in December, 1990 of the Local Union Officer candidates who receive the highest number of votes, he will have failed to satisfy the working at the craft requirement for eligibility for Local office. If he is deemed to be out of office during the month of January, he will have a one-month break in his working at the craft requirement. He will thus be precluded from running for delegate.

In this case, however, Mr. Rutledge is actively challenging the results of the Local Union officer elections. He contends before the Department of Labor that (1) the results of the Local Union officer election should not be certified; (2) he should continue to be considered to hold the office he held prior to the election until the results are certified; (3) he should be declared the winner and president of Local 996; and/or (4) a new election should be held.

While the DOL has permitted new officers to be installed in Local 996, it has not yet certified the results of the election. Depending upon the ultimate DOL decision, Mr. Rutledge may regain his position as an officer of Local 996.

Mr. Rutledge was removed from his position as an officer of Local 996 on the basis of the results of a Local Union Officer election. He is actively pursuing his removal, in effect his discharge, before the appropriate tribunal, i.e., the DOL. The ultimate result of his challenge, if successful, will restore Mr. Rutledge to office in Local 996.

Article IV, Section 2(b) of the Rules provides in pertinent part:

The active employment at the craft requirement may be excused by . . . active pursuit of an unresolved grievance or other

legal action challenging suspension or discharge.

Mr. Rutledge is actively challenging his removal from office in Local 996. His challenge, if successful, will restore him to office. If it is so restored, he will retain active employment at the craft and thus eligibility to be a delegate to the 1991 IBT International Convention.

Accordingly, the Election Officer fails to find Mr. Rutledge ineligible for delegate pending the DOL's determination of the results of the October-November Local Union election.

For the reasons expressed by the Election Officer, his determination that Mr. Rutledge has satisfied the working at the craft requirement is affirmed in all respects.

EMPLOYER STATUS

Mr. Warashina also contends that Mr. Rutledge is ineligible to run for the position of delegate because he is an "employer." It is undisputed that Mr. Rutledge is an officer of two corporations. The Election Officer concludes that "[a]lthough this may be true as a factual matter, his status as an employer does not preclude his serving as a delegate." As stated by the Election Officer:

The IBT Constitution does not prohibit members from also being employers. See, e.g., Art. II, Section 2(B) and (c) of the IBT Constitution (acknowledging that vendors and owners of teams, vehicles and equipment may be members at the same time they employ others). Likewise, nothing in the Rules prohibits a member who is also an employer from seeking election and holding the position of delegate.

In support of this challenge, Mr. Warashina cites to the March 14, 1989, Consent Order, paragraph 8. at p. 5, wherein it is provided that:

Article IV, Section 2 of the IBT Constitution shall be deemed and is hereby amended to include a new paragraph as follows:

"No candidate for election shall accept or use any contributions or other things of value received from any employers, representative of an employer, foundation, trust or any similar entity. Nothing herein shall be interpreted to prohibit receipt of contributions from fellow employees and members of this International Union. Violation of this provision shall be grounds for removal from office."

Mr. Warashina makes no allegation that Mr. Rutledge has violated this prohibition, thus, its relevance is unclear.

In addition, Mr. Warashina cites to DOL Regulation 452.47 (29 C.F.R., Ch. IV, Section 452.47) which provides that "employers, while they may be members, may not be candidates for office or serve as officers" A review of the full text of Regulation 452.47 and not just the portion cited by Mr. Warashina, clearly reveals that the DOL's prohibition on employers as candidates, applies only in limited circumstances not applicable here. As stated in the Regulation:

An overall consideration in determining whether a member may fairly be denied the right to be a candidate for Union office as an employer or supervisor is whether there is a reasonable basis for assuming that the person involved would be subject to a conflict of interest in carrying out his representative duties for employees and rank-and-file Union members.

Mr. Warashina makes no such allegation here. In addition, there is no suggestion that the two corporations in which Mr. Rutledge serves as an officer, have any connection to Local 996 or, for that matter, the IBT. Thus, the Election Officer's finding that Mr.

Rutledge's status as an employer does not render him ineligible is affirmed in all respects.

THE HOTEL EMPLOYEES AND RESTAURANT EMPLOYEES

Finally, Mr. Warashina also contends that Mr. Rutledge is not eligible to serve as a delegate from the Local because he maintains membership and holds the position of Financial Security/Treasurer in a rival union, Local #5 of the Hotel Employees and Restaurant Employees ("HERE"). According to Mr. Warashina, HERE has competed as recently as January and February 1991 with IBT Local 996 to represent employees of Consolidated Amusement Company in Hawaii.

Neither the Election Rules nor the IBT Constitution prohibits a member of the IBT from holding membership or office in another labor organization. Mr. Warashina argues that pursuant to the Consent Order:

[T]he Independent Administrator possesses the authority to determine whether or not Mr. Anthony A. Rutledge is a member of the rival union and, by virtue of the position he holds within such union, whether or not he is disloyal to and "in a conflict of interest" with the best interest of Local 996.

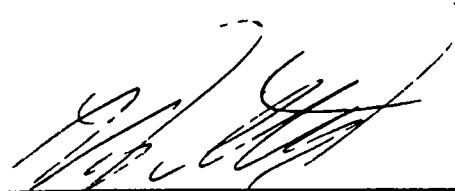
The Election Officer addresses this contention by stating in his Summary:

To the extent that Mr. Warashina is charging Mr. Rutledge with a conflict of interest or acts of disloyalty to the IBT, that claim is not within the jurisdiction of the Election Officer. The proper forum for Mr. Warashina's claim is the intra-union procedure set forth in the IBT Constitution, Art. XIX, at 114-16 or a request that charges be brought against Mr. Rutledge by the Court appointed Investigation Officer.

For the reasons expressed by the Election Officer, the determination that Mr. Rutledge's status in Local #5 does not render him ineligible as a candidate for delegate on behalf of Local 996 is affirmed.

CONCLUSION

Accordingly, the ruling of the Election Officer is affirmed in all respects.



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

Dated: March 11, 1991