



OFFICE OF THE ELECTION OFFICER
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Michael H. Holland
Election Officer

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February 22, 1991

VIA UPS OVERNIGHT

Lennie Carlton
26 South 17th Street
East Orange, New Jersey 07018

Carlo L. DelPizzo
6 Sherwood Road
Edison, New Jersey 08817

Gene Giacumbo
President
Teamsters Local 843
446 Morris Avenue
Springfield, New Jersey 07081

Re: Election Office Case No. P-487-LU843-NJE

Gentlemen:

A pre-election protest was filed pursuant to Article XI, Section 1 of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*"). The complainant, Lenny Carlton, has filed a protest challenging the eligibility of Carlo L. DelPizzo to run as a candidate for delegate to the 1991 IBT International Convention. The Election Officer's investigation as to the facts relating to the protest discloses the following.

The nomination meeting for Local Union 843 took place on February 11, 1991. At this meeting, Carlo DelPizzo was nominated for delegate to the 1991 IBT International Convention. In order to be eligible to run for delegate a member must be in continuous good standing with his Local Union, with his dues paid to the Local for a period of twenty-four (24) consecutive months prior to the month of nomination, with no interruptions in active membership due to suspensions, expulsions, withdrawals, transfers or failure to pay fines or assessments. *Rules*, Article VI, Section 1(a)(1).

Complainant Carlton does not challenge Mr. DelPizzo's eligibility on the basis of any failure to pay required dues. The basis of the challenge centers upon complainant Carlton's allegation that Mr. DelPizzo has failed to pay to the Local Union certain monies that complainant alleges DelPizzo improperly received. Mr. DelPizzo's withholding of such funds, according to Mr. Carlton, constitutes misconduct which deprives Mr. DelPizzo of good standing as a member of the Local.

The investigation disclosed that the monies in dispute involve meeting allowance fees in the amount of \$60 00 paid to DelPizzo on January 5, 1990. The meeting for which the fees were paid was a Local Union Executive Board meeting conducted by DelPizzo under asserted authority as President of Local 843. Mr. DelPizzo's entitlement to the meeting fees is disputed because the meeting was held after Mr. DelPizzo had received directions from the General President of the International Union directing the losers of a Local Union officer election, which included Mr. DelPizzo, to seat the candidates who won the election as the new officers of the Local. In sum, it is alleged Mr. DelPizzo had no authority to hold a meeting of the Executive Board because he was no longer President of the Local Union.

The investigation disclosed that a total of seven board members were issued meeting allowance checks for the January 5, 1990 meeting. Demands from the new Local Union officers were made to all these members that they refund the monies. Four of the seven board members voluntarily returned or voided the checks. Mr. DelPizzo is a board member who cashed the check and has failed to make any refund of the monies to the Local Union. The allegation is made, and the investigation confirms that several demands were made by officers and members of the Local Union that Mr. DelPizzo return the monies. The investigation further discloses that no formal intra union charges were filed against Mr. Del Pizzo and no decisions or rulings were made by the IBT, the Local Union or any other subordinate body of the IBT ordering Mr. DelPizzo to refund the monies to the Local Union.

Article XIX, Section 6(b)(3) of the *IBT Constitution, Grounds for Charges Against Members, Officers, and Subordinate Bodies*, provides that charges may be filed against a member or officer for embezzlement or conversion of Union's funds or property. Complainant's challenge to Mr. DelPizzo's good standing as a member is premised upon his claim that Mr. DelPizzo was not entitled to receive payment for attending the January 5, 1990 Local Union meeting and that by cashing the check and refusing to return it, he has improperly converted Union funds. Complainant may very well be correct in this claim. It may be that Mr. DelPizzo does not have any valid defense to the claim. However, it is clear that under Article XIX - Trials and Appeals, of the IBT Constitution, the claim cannot be converted into a debt or charge owed to the Local Union without charges being preferred and the matter being heard and adjudicated by a Trial Board. To date, such action has not taken place.

Complainant is further advised that the jurisdiction of the Election Officer does not extend to determinations as to whether or not members or officers have violated Article XIX, Section 6(b)(3) of the *IBT Constitution*. Pursuant to the Consent Order of March 14, 1989, the authority to bring charges based upon alleged violations of a member's or officer's fiduciary duty lies exclusively within the jurisdiction of the Investigation Officer, Charles Carberry. Adjudication of whether charges filed are violations of fiduciary obligations and the determination of the appropriate penalty for any violations found is within the exclusive jurisdiction of the Independent Administrator, Frederick B. Lacey. See Election Office Case No. P-316-LU786-CHI (January 25,

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1991), affirmed by the Independent Administrator Frederick B. Lacey Accordingly, this protest must be DENIED¹

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
Edward T. Ellis, Regional Coordinator
Charles Carberry, Investigation Officer

¹A copy of the protest will, however, be forwarded simultaneously with the issuance of this decision, to the Investigation Officer.