



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

Michael H. Holland
Election Officer

(202) 624-8778
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July 23, 1991

VIA UPS OVERNIGHT

Aaron Kesner
2617 W. Farragut Ave
Chicago, IL 60625

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

Chris Pedersen
438 W. Root St
Chicago, IL 60609

Re: Election Office Case No. P-567-LU705-CHI

Gentlemen

A pre-election protest has been timely filed pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules"). In their protest, Chris Pedersen and Aaron Kesner allege that they have been prohibited from distributing campaign literature at a Local 705 meeting, contrary to the *Rules*. Chris Pedersen alleges additionally that he has been suspended from membership in Local 705 because he testified against Secretary-Treasurer Daniel Ligurotis in a court proceeding relating to the Consent Order issued by the United States District Court in United States of America v. IBT et al., 88 Civ. 4486 (S.D.N.Y.).

Aaron Kesner is a retired member of Local 705. Chris Pedersen is a former member of Local 705, who was suspended from membership in the Local in February, 1990 for non-payment of dues.

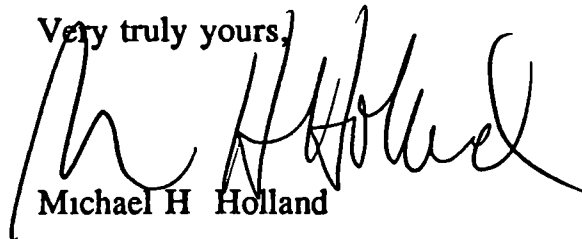
Both Kesner and Pedersen attended the Local 705 nominations meeting held on February 7, 1991. On February 21, 1991, a general meeting was held by the Local. Kesner was denied entrance to this meeting by Jack Killachey, and Mickey Bock, business representatives of Local 705. Killachey and Bock blocked the door, and advised Kesner to leave. After Kesner was denied entry to the meeting, Pedersen decided to remain outside the Local Union hall with Kesner to distribute their literature.¹

¹The literature was a description and a criticism of Local 705 attorney Sherman Carmell's alleged representation of an employer.

Leroy Ellis
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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.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael H. Holland". The signature is written in a cursive style with a large initial "M".

Michael H Holland

MHH/mca

cc Frederick B Lacey, Independent Administrator
Julie E Hamos, Regional Coordinator

Pedersen did not attempt to attend the meeting

Other members of the Local were similarly standing near the door to the hall passing out campaign literature. As members left the meeting, Kesner and Pedersen continued to pass out their literature. At the same time, the other Local 705 members distributing literature attempted to dissuade members from taking literature from Kesner and Pedersen, yelling that they were TDU and communist.

Following the meeting, both Pedersen and Kesner were directed to leave the property on which the Local Union hall is situated. A City of Chicago policeman who was in a squad car outside the hall also advised Kesner and Pedersen that they should leave because the property was private.

The investigation shows that another retired member, John Navigato, a former Vice President of the Local Union, did attend the February 21, 1991 meeting. Additionally, the President of the Local Union, Daniel Ligurotis, has informed Adjunct Coordinator Jonathan Rothstein, that retired members do have the privilege of attending general membership meetings in this Local.

The Local Union's position is that the protestors are not members of the Local Union, that their literature was not authorized by the "Membership Slate," one of the competing slates of delegate and alternate delegate candidates in Local 705, and that Pedersen's allegations of retaliation relate to his court testimony rather than election or campaign activity.

The IBT Constitution, Article XVIII, § 6 (c), provides that a Local Union may provide in its ByLaws for retired members to continue as honorary Local Union members with the privilege of attending Local Union meetings. While the ByLaws of Local 705 appear to be silent on this issue, Ligurotis agrees and the evidence shows that retired members in this Local are permitted to attend general membership meetings. Thus it was a violation of Article VIII, § 10(a) of the *Rules* to deny access to the meeting to Kesner.

The *Rules* provide in Article VIII, § 10 that each Local Union member has a right, equal to that provided other Local members, to engage in campaign activities on Union premises. Further, the Election Officer has held that, regardless of past practice, Local Union members have a right to engage in campaign activities on Union property outside the Local Union hall. Local 705 permits, and permitted on February 21, 1991, Local Union members to distribute campaign literature on its property.

The Local also affords retired members certain membership rights such as the right to attend meetings. Since retired members are permitted to attend local 705 membership meetings, the Election Officer concludes that such retired members must be permitted to exercise the right afforded under Article VIII, § 10 of the *Rules* at such membership meetings. Therefore, Kesner had a right to distribute literature outside the building on February 21, 1991 as other Local 705 members were doing.

The literature that Kesner was attempting to distribute on February 21, 1991 was campaign literature. That the literature was not endorsed by the Membership Slate is irrelevant. The literature related to the IBT International Union delegate and officer election. Ligurotis was a candidate for delegate from Local 705 and an announced candidate for General Secretary-Treasurer of the International Union. Thus, it was a violation of the *Rules* to prevent Kesner from engaging in the distribution of his literature outside the Local Union hall on February 21, 1991.

It is undisputed that Mr. Pedersen owes approximately \$1,270.00 in back dues as of February 25, 1991. He contends, however, that he was permitted to participate in the affairs of the Local Union, and that the Local did not suspend him until after he appeared as a witness against Ligurotis in the United States District Court for the Southern District of New York in connection with the Consent Order providing for the delegate and International Officer election.

The investigation shows that Pedersen has attended Local meetings even though his dues have been in arrears and he has been suspended. In fact, he attended the Local nominations meeting held in February, 1991. The Local has advanced no reason for denying him access to its property at this juncture.

Further, Pedersen alleges that other members who have been suspended from membership have been permitted to attend Local meetings. The Election Officer representative was unable to confirm the validity of this allegation. However, if in fact the Local does permit such members to participate in Local Union meetings and events, Pedersen must be permitted the same opportunity on an equal basis.

To the extent noted above, the *Rules* have been violated and the protest is GRANTED. To remedy the violation, the Election Officer orders the following:

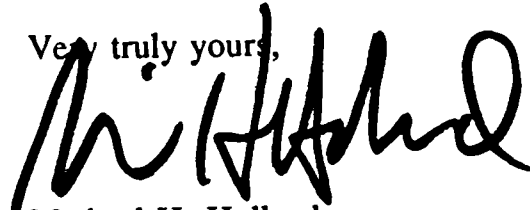
- (1) Local 705 shall cease and desist from denying Aaron Kesner and other retired Local 705 members access to Local Union meetings, and
- (2) Local Union 705 shall cease and desist from denying Aaron Kesner and other retired Local 705 members from engaging in campaign activities outside the Local Union hall whether on or off the Union's private property.

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)

Aaron Kesner
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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/mjv

cc Frederick B Lacey, Independent Administrator

Julie E Hamos, Regional Coordinator

Edward T Ferguson, III, Assistant United States Attorney for the
Southern District of New York

IN RE:

CHRIS PEDERSEN,
AARON KESNER,

AND

IBT LOCAL UNION NO. 705

: 91 - Elec. App. - 174 (SA)
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DECISION OF THE
INDEPENDENT
ADMINISTRATOR

This matter arises out of an appeal from a decision of the Election Officer in Case No. P-567-LU705-CHI. A hearing was held before me at which the following persons were heard via telephone conference: the complainant, Chris Pedersen; Aaron Kesner, a witness on behalf of Mr. Pedersen; William Widmer, an attorney with Local 705; and John J. Sullivan, an attorney with the Election Office. In addition, the Regional Coordinator, Julie Hamos, and her Adjunct, Mark Kupiec, audited the hearing.

The contentions of the parties are succinctly stated by the Election Officer in his Summary as follows:

Chris Pedersen, a former member of Local Union No. 705 who was suspended from membership due to non-payment of his dues, contends that he was improperly prevented from attending a general membership meeting on February 21, 1991, and from distributing campaign literature at or after that meeting. Although Mr. Pedersen does not dispute that his dues are in arrears, he claims that the Local did not enforce his suspension until after he testified in a contempt proceeding [held before the Honorable David N. Edelstein] against Daniel J. Ligurotis, Secretary-Treasurer of Local 705 and head of

a slate of candidates for delegate to the IBT Convention that Mr. Pedersen oppose[d]. Local Union No. 705 contends that because Mr. Pedersen is not an active member of the Local, he does not have the right to attend meetings and distribute campaign literature [on the Local's premises].

The Election Officer's investigation disclosed that Mr. Pedersen was allowed to attend general membership meetings after he gave the testimony for which he claims he is suffering reprisal. In fact, Mr. Pedersen was allowed to attend the Local's nominations meeting held earlier in February 1991. The evidence further demonstrated that Mr. Pedersen was not barred from the February 21, 1991, Local meeting. Instead, Mr. Pedersen chose not to attend that meeting because Mr. Kesner was denied entry. Thus, Mr. Pedersen's claim regarding entry into the Local's meetings has no merit.

While the Local determined that Mr. Pedersen, as a suspended member of the Local, could attend Local meetings, it would not tolerate his distribution of campaign literature on the Local's premises. As the Election Officer notes in his Summary, "the Election Rules do not provide protection to individuals who are not members of the IBT." The Election Officer further states that:

The Election Rules would be implicated only if Mr. Pedersen was singled out on the basis of his political affiliation or allegiance, or if he were treated differently because of his political view or the content of his campaign literature. In other words, if the Local allowed suspended members holding views different from Mr. Pedersen to participate in the election by distributing campaign literature on Union premises, that right would also extend to Mr. Pedersen.

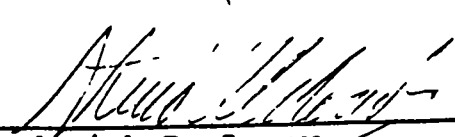
The Election Officer did not find, however, any instance where a suspended member was treated differently from Mr. Pedersen.

Accordingly, the Election Officer's denial of Mr. Pedersen's protest is affirmed.

I should note further that Mr. Pedersen submitted detailed written submissions prior to the hearing and spoke at the hearing for nearly one hour. In both Mr. Pedersen's written submissions and in his oral presentation, he made countless allegations of reprisal against him, conspiracy within the Local, conspiracy within the law firm representing the Local, conspiracy within the Election Office, and conspiracy within the office of the Regional Coordinator. In the past, I have rejected claims regarding any conspiracy or prejudice within the Election Office or the office of the Regional Coordinator, Julie Hamos, in connection with Local 705. See In Re: McCormick, 91 - Elec. App. - 164 (SA) (June 27, 1991). The allegations regarding the alleged reprisals against Mr. Pedersen and the alleged conspiracies within the Local and the Local's law firm went far beyond the scope of this appeal; thus, I need not comment on the merit, if any, of these allegations.

I do note, however, that if Mr. Pedersen feels that his cooperation with the United States Attorney's Office in regards to the contempt proceedings against Daniel Ligurotis resulted in any reprisal against him, then he should bring his concerns to the United States Attorney's Office for the Southern District of New York. I have every confidence that the United States Attorney's

Office would fairly evaluate Mr. Pedersen's allegations and take whatever steps, if any, it deemed appropriate.



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

Dated: August 9, 1991

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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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.-174 OF :
THE INDEPENDENT ADMINISTRATOR :
-----X

EDELSTEIN, District Judge:

WHEREAS petitioner appeals decision 91-Elec. App.-174 of the Independent Administrator, which affirmed the Election Officer's decision P-567-LU705-CHI; and

WHEREAS the Election Officer ruled that Petitioner was ineligible to attend a Local 705 delegate meeting because he was not a member in good standing since he had failed to properly pay his local union dues; and

WHEREAS the Independent Administrator determined that Petitioner was ineligible to attend the union meeting because it was undisputed that he had failed to pay his dues and was a suspended member of Local 705; and

WHEREAS this Court and the Court of Appeals have ruled that determinations of the Independent Administrator "are entitled to great deference." United States v. International 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" July 31, 1991 Memorandum & Order, slip opinion at 3-4 (S.D.N.Y. 1991); July 18, 1991 Memorandum & Order, slip opinion at 3-4 (S.D.N.Y. 1991); June 6, 1991 Memorandum & Order, slip opinion at 4-5 (S.D.N.Y. 1991); May 13, 1991 Memorandum & Order, 764 F. Supp. 817, 820-21 (S.D.N.Y. 1991); May 9, 1991 Memorandum & Order, 764 F. Supp. 797, 800

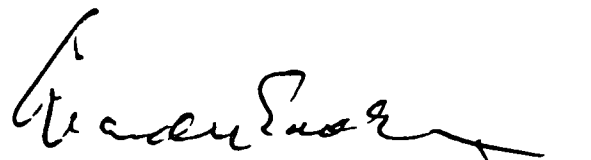
(S.D.N.Y. 1991); May 6, 1991 Opinion & Order, 764 F. Supp. 787, 789 (S.D.N.Y. 1991); December 27, 1990 Opinion & Order, 754 F. Supp. 333, 337 (S.D.N.Y. 1990); September 18, 1990 Opinion & Order, 745 F. Supp. 189, 191-92 (S.D.N.Y. 1990); August 27, 1990 Opinion & Order, 745 F. Supp. 908, 911 (S.D.N.Y. 1990); March 13, 1990 Opinion & Order, 743 F. Supp. 155 (S.D.N.Y., 1990), aff'd, United States v International Brotherhood of Teamsters, 905 F.2d 610, 616 (2d Cir, 1990); January 17, 1990 Opinion & Order, 728 F. Supp. 1032, 1045-57 (S.D.N.Y. 1990), aff'd, 907 F.2d 277 (2d Cir. 1990); November 2, 1989 Memorandum & Order, 725 F.2d 162, 169 (S.D.N.Y. 1989);

WHEREAS upon review, the determination of the Independent Administrator is fully supported by the evidence and is neither arbitrary nor capricious;

IT IS HEREBY ORDERED that the decision 91-Elec. App.-174 of the Independent Administrator is affirmed in all respects.

SO ORDERED.

Dated: September 11, 1991
New York, New York



U.S.D.J.