



OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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Election Officer

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April 16, 1991

VIA UPS OVERNIGHT

Carlo L. Del Pizzo
6 Sherwood Rd
Edison, NJ 08820

Gene Giacumbo
President
IBT Local Union 843
446 Morris Ave
Springfield, NJ 07081

Re. Election Office Case No P-658-LU843-NJE

Gentlemen

A pre-election protest was filed under Article XI of the Article XI, §1 of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") In his protest, Carlo Del Pizzo, the former President of Local 843, alleges that Gene Giacumbo, the current President and principal officer of Local 843, violated the *Rules* by using the first edition of the Local 843 newsletter for campaigning purposes The protest was deferred for post-election review by the Election Officer pursuant to his authority under Article XI of the *Rules*

A mail ballot election was conducted for Local 843 on March 28, 1991 Local 843 has approximately 580 members The majority of the members work in the production department of the Anheuser-Busch Brewery in Newark, New Jersey The ballots were mailed on March 11, 1991 A total of 282 ballots were received, 13 ballots were void Nine ballots were challenged, the challenges were not resolved since such ballots did not affect the outcome of the election

Two delegate candidates competed for the single delegate position In the final tally, Gene Giacumbo received 157 votes and Carlo Del Pizzo received 109 votes Thus, 46 votes separated the winning candidate for delegate from the losing candidate for delegate Three alternate candidates were on the ballot Twenty-six ballots separated the winning alternate from the next highest vote getter¹

¹This protest concerns only the delegate race, no protest as filed with respect to the alternate contest

The delegate and alternate election is the second election within 15 months where Giacumbo and Del Pizzo have been opponents. The December 1989 Local Union officer election was hotly contested. The candidates for Local Union president were the two delegate candidates in this election, Del Pizzo and Giacumbo. Giacumbo defeated the incumbent, Del Pizzo, for the office of President by a 154 to 118, the Local Union officer election was conducted, like the delegate election, by mail ballot.

Del Pizzo claims that at a crucial point in the delegate election process, the Local published, for the first time in its history, a Local newsletter which, in two front page articles, attacked him. Del Pizzo claims that the allegations contained in one of the articles is not true and further that his candidacy for delegate was adversely affected by the publication and distribution of the newsletter.

The newsletter in question is an 8 page publication entitled Local 843 News. It was mailed to all members on or about March 7, 1991, just 4 days prior to the mailing of the ballots in the delegate and alternate delegate election. The front page of the newsletter contains two articles. The article appearing on the top half of the newsletter is entitled "Local Pushes for Better Contract". The article on the bottom half of the newsletter is called "About Money and Other Funny Business". A review of the other articles appearing in the newsletter relate to negotiations between the IBT and Anheuser-Busch. Pages 4 and 5 of the newsletter contain a comparison of the working conditions in effect for the members of each IBT Local Union employed by Anheuser-Busch. Pages 2, 3, and 7 of the newsletter contain a summary of Local 843's contract proposals to Anheuser-Busch.

The first article to which Del Pizzo objects appears as the lead article on the front page of the newsletter. The article is entitled "Local Pushes for Better Contract". The article specifically criticizes the previous Anheuser-Busch agreement as a contract "which cost us all dearly". The article then states that the Executive Board of Local 843 had agreed to file an appeal with the International IBT Executive Board, "claiming that a national contract had been negotiated which benefitted the bargaining unit at the expense of Local 843's Joint Boards". The article states, "Unfortunately, and despite claiming that he had done so, the then President and Secretary-Treasurer of the Joint Board, Carlo Del Pizzo, neglected to ever file that appeal. Only he knows why he told Executive Board and his membership he had acted in their best interest, while this claim was not substantiated by the facts."

Contrary to the article, the investigation shows that Del Pizzo did in fact file an appeal with the IBT General Executive Board. According to Secretary-Treasurer Randy Heath, the current Executive Board of Local 843 holds Del Pizzo responsible for failing to pursue the appeal, the intent of the article was to convey that message. However, the article itself clearly states that an appeal was not filed.

The second article that appears on the front page of the newsletter is entitled "About Money and Other Funny Business". The article criticizes investments of Union funds and reports that the Executive Board installed in January, 1990, has been able to

better the Local's investment strategy. The article specifically refers to Del Pizzo by name and accuses him as the source of previous financial practices. "When queried about the investments at a General meeting early last year, ex-President Carlo Del Pizzo replied, 'I don't know nothing about the money.' We believe him."

Giacumbo states and the investigation confirms that he initiated the newsletter in fulfillment of the promises he made during his campaign for Local Union President. The investigation shows that members of the Executive Board did continue to remind Giacumbo that he needed to publish a newsletter, and the Executive Board increased such reminders as the contract ratification vote on the Anheuser-Busch national contract drew near.² Giacumbo had sole editorial control of the newsletter, and he is the author of the articles on the front page of the newsletter which criticize Del Pizzo.

Giacumbo claims that the newsletter articles that name Del Pizzo were designed to respond to questions raised by members of Local 843 and others, particularly questions regarding the provisions of the Anheuser-Busch contract that were allegedly unfair to the members of Local 843. Giacumbo did not provide any specific information about the questions raised by the membership and "others" concerning the Union finances.

Article VIII, § 7 of the *Rules* prohibits a Union financed publication from printing unfavorable articles about a particular candidate without journalistic justification. The Election Officer concludes that the publication of articles critical of Del Pizzo in the Local newsletter during the election period in the Local 843 News is a violation of these *Rules*.

The Election Officer notes that the information contained about Del Pizzo's alleged failure to file an appeal after the last negotiation in the Article titled, "Local Pushes for Better Contract" is not true.³ Del Pizzo has no role in the 1991 Anheuser-Busch negotiations. The only reasons to link Del Pizzo by name with an old contract controversy is for campaign purposes.

A report to the Local on its financial status could also be made without criticizing Del Pizzo. In fact, this same article informs the membership that a subsequent newsletter will provide details about "the hostile [leadership] transition in February 1990." Such subsequent issue, distributed after the delegate election, could also have contained the criticism of Del Pizzo's investment strategies. Neither item was current news, the transition occurred in January, 1990. The Election Officer concludes that no valid journalistic reason exists for the criticism of Del Pizzo and his financial management of the Local at the time of the election. Moreover, Giacumbo failed to

²The date for counting the mail ballots for ratification of that collective bargaining agreement was March 22, 1991.

³While the Election Officer does not review campaign literature for truth or falseness, the literature here is not campaign literature but a Union publication.

Carlo L. Del Pizzo
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proffer an explanation for the appearance of this particular article on the front page of the paper. It is not related in any way to the Anheuser-Busch negotiation, the focus of the entire newsletter.

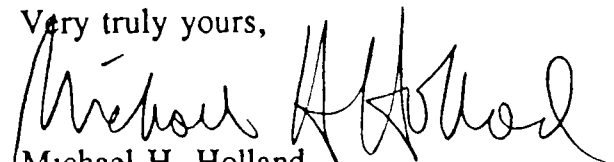
The *Rules* have been violated by Local 843 by its publication during the election period of a Union financed publication that contains campaign material, material critical of a candidate. Since the protest is being considered post-election, however, the *Rules* and existing legal standards require that the violation be evaluated in terms of its potential impact on the outcome of the election. *Rules*, Article XI, § 1 (b)(2), Wirtz v. Local Unions 410, 410A, 410B & 410C, International Union of Operating Engineers, 366 F.2d 438 (2nd Cir. 1966). The Election Officer concludes that there is no reasonable probability that the violation affected the results of the election.

The outcome of the delegate election is virtually the same as the results of the December, 1989 Local Union officer election. In the 1989 Local Union officer election, Giacumbo received 154 votes and Del Pizzo received 118 votes. In the delegate election, Giacumbo received 157 votes and Del Pizzo received 109 votes. Moreover, this is a small Local Union, it has approximately only 580 members. Both candidates are well-known. The criticisms of Del Pizzo contained in the Local's newsletter had been voiced before. Indeed, these issues were the focus of the Local Union officer campaign. The fact that the vote totals for both the officer and delegate elections were almost identical underscores the conclusion that the contents of the Union newsletter did not affect the outcome of the election.

The Election Officer hereby finds that the violations of the *Rules* discussed above do not constitute a basis for overturning the election. There is no reasonable probability that the results of the election would have been different if the Union newsletter had not been published. Therefore, the protest is DENIED.

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

Carlo L. Del Pizzo
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MHH/mca

cc Frederick B. Lacey, Independent Administrator
Edward T. Ellis, Regional Coordinator

IN RE:

CARLO L. DEL PIZZO

and

GENE GIACUMBO

and

IBT LOCAL UNION NO. 843

91 - Elec. App. - 134 (SA)

DECISION OF THE
INDEPENDENT
ADMINISTRATOR

This matter arises out of an appeal from a Decision of the Election Officer dated April 16, 1991, in Case No. [REDACTED]. A hearing was held before me by way of telephone conference on April 23, 1991, at which the following persons were heard: the complainant, Carlo Del Pizzo; Gene Giacumbo, the President of Local 843; John J. Sullivan and Barbara Hillman, on behalf of the Election Officer; and Larry Turner, an Adjunct Regional Coordinator.

Mr. Giacumbo is the President of Local 843. In addition Mr. Giacumbo was the successful candidate for Local 843's single delegate position.

Mr. Del Pizzo is a member of Local 843 and the former President of that Local. Mr. Del Pizzo lost his bid for the delegate spot to Mr. Giacumbo. Mr. Del Pizzo alleges that Mr.

Giacumbo violated the Rules for the IBT International Union Delegate and Officer Election (the "Election Rules") by using the first issue of the Local 843 News (a newsletter), to criticize him and undermine his candidacy. Two articles referencing Mr. Giacumbo were printed on the first page of the Local 843 News. It is not disputed that Mr. Giacumbo was the author and sole editor of the Local 843 News. Mr. Giacumbo contends that he began to distribute the Local 843 News to fulfill a promise he made while campaigning for President of the Local in 1989. He also suggests that he was urged by his executive board to publish a newsletter as negotiations with a major employer drew to a close. Lastly, he defends his special references to Mr. Del Pizzo as responses to questions that had been raised by members.

Article VIII, Section 7 of the Election Rules prohibits the use of a union-financed publication to attack or support the candidacy of any person. In fact the Election Officer published an Advisory on this very issue on December 21, 1990, in which he made it clear that "[p]rinting unfavorable articles" about a candidate in a union publication constitutes a violation of the Election Rules.

The Election Officer closely analyzed the two articles at issue. Both were authored by Mr. Giacumbo. Both criticized Mr. Del Pizzo.

The Election Officer concluded that the motivation behind the two articles was to undermine Mr. Del Pizzo's campaign, and at the same time promote Mr. Giacumbo's campaign. Accordingly, the Election Officer found the newsletter to be in violation of the Election Rules, Article VIII, Section 7. I agree with the Election Officer's analysis. A review of the articles in question reveals that the references to Mr. Del Pizzo are neither timely, newsworthy or "compelled by journalistic concerns." Election Officer Summary at p. 5. In addition, the references to Mr. Del Pizzo are all critical.

Having found a violation of the Election Rules, the Election Officer then addressed the question of whether that violation "may have affected the outcome of the election." As the Election Rules made clear:

Post-election protests shall only be considered and remedied if the alleged violation may have effected the outcome of the election. [Election Rules Article XI, Section 1.b.(2)]

The Election Officer's decision not to remedy this violation is explained in his Summary as follows:

Although the issues covered in the newsletter were inappropriately publicized in that forum, it is doubtful they had much effect on the readership. The two opponents were well-known to the members, and the issues that divided them, including the issues publicized in the newsletter, were fully publicized in the previous election in December 1989. Mr. Giacumbo's views on the contract negotiated by his predecessor and the investment strategy practiced by him were not unknown to the Local's membership in March 1991.

Moreover, the vote in the two elections was virtually identical. In December 1989, 154 members voted for Mr. Giacumbo; in March 1991 he garnered 157. In December 1989, Mr. Del Pizzo received 118 votes; in March 1991, his ballot count was 109. Voter turn-out was comparable: 272 ballots were counted and/or returned in December 1989; slightly more -- 288 -- were returned in March 1991; slightly less were counted -- 206 -- due to void ballots and the nine unresolved challenges. In the election for President Mr. Giacumbo won with almost 57 percent of the vote; in the election for delegate he won with slightly over 59 percent of the vote if the void and challenged ballots are ignored; including all ballots, he obtained almost 55% of the vote. The fact that the vote in the two elections 15 months apart remained constant effectively minimizes the possibility that the publication of the newsletter improperly distorted the results of the election.

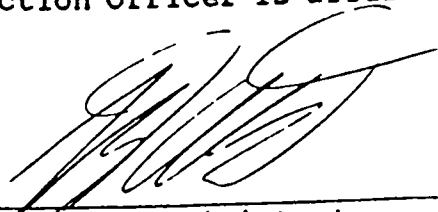
In short, the Election Officer did not find "a reasonable probability that the results of the election may have been different if the violation had not occurred." Election Officer Summary at p. 7.

I agree with the Election Officer's analysis. While the articles in the newsletter were indeed designed to be critical of Mr. Del Pizzo, it is not disputed that the matters that were discussed were not new to the membership. In fact, in the December 1989 Presidential election, the two candidates campaigned aggressively and raised the very issues and criticisms that were highlighted in the newsletter. I find it particularly compelling that the election results of the 1989 Presidential election and of the Delegate election were virtually identical.

While Mr. Del Pizzo suggested that 125 new members of the Local joined after the December 1989 Presidential election, there were simply no support for his estimate. In fact, the data

available to the Election Officer and his Regional Coordinator suggest that the size of the Local remained essentially the same over the past 15 months. Mr. Giacumbo concurred with this analysis.

Accordingly, the decision of the Election Officer is affirmed.



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

Dated: April 25, 1991