

OFFICE OF THE ELECTION OFFICER
INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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Washington, DC 20001

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Election Officer

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July 17, 1991

VIA UPS OVERNIGHT

Phillip Feaster
President
IBT Local 639
3100 Ames Pl., NE
Washington, DC 20018

William F. Genoese
15 East 26th Street
Suite 1508
New York, New York 10010

Re: Election Office Case No. P-752-IBT

Gentlemen:

The above referenced protest has been filed pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules"). In his protest Philip Feaster alleges that William Genoese, at the time of the protest a candidate for General President and now a nominated candidate for International Vice President, has used Local Union funds to finance his campaign activities contrary to the *Rules*.

Feaster alleges that Genoese used Union funds to pay for the following activities and that such activities were in furtherance of Genoese's election campaign: (1) his TITAN message to William J. McCarthy, General President IBT dated February 25, 1991, (2) his open letter to members of the Teamsters International staff dated April 23, 1991, (3) his attendance at an IBT General Executive Board meeting in Orlando, Florida on April 19, 1991, and (4) his attendance at a Joint Council 41 meeting in Naples, Florida where he distributed literature about the IBT election process in a folder titled "We are the Teamsters." Subsequently, Mr. Feaster by his counsel, also alleged that Genoese attended a Black Caucus meeting in Pennsylvania at Union expense for the purpose of engaging in campaign activities.

The protest was investigated by Regional Coordinator Amy Gladstein as well as the Washington D.C. Office of the Election Officer. The investigation discloses that the TITAN message to General President McCarthy, the open letter, as well as Genoese's attendance at the Orlando, Florida General Executive Board Meeting dealt primarily with Genoese's discharge as the director of the Airline Division of the IBT. While the rhetoric of the TITAN message and open letter, particularly with respect to the criticisms of General President McCarthy contained therein, may have some campaign use, the primary focus of both such communications is the propriety of

Genoese's discharge. Utilization of Union funds for the purpose of dealing with intra-union matters, other than the election campaign, is not a violation of the *Rules*. Further, incidental campaign statements, appended to documents for which Union payment is not otherwise violative of the *Rules*, do not violate the *Rules*. See Article VIII, §10 (b).

Similarly, Genoese's trip to the General Executive Board Meeting in Orlando, Florida was for the purpose of appearing before the Executive Board with respect to his discharge as Director of the Airline Division. That he may have engaged in some campaigning while at the General Executive Board Meeting is not violative of the *Rules*. See Election Office Case No. P-107-LU576-CSF, affirmed on this point 91-Elec.-App. 60.

Genoese's attendance at the Joint Council meeting in Naples, Florida was for the purpose, however, of furthering his election campaign.¹ The Joint Council sponsored a forum and invited all candidates for IBT General President to participate. Genoese attendance at that meeting was thus in furtherance of his campaign, which at that time was for the position of IBT General President.

The Election Officer's investigation has determined that, with the exception of his airfare, all costs associated with Genoese's trip to Naples, Florida were personally paid by him. To travel to and from Naples, Florida, Genoese used an airlines pass provided him by Pan American World Airways. The pass was provided to him as the Chief Executive Officer of Local 732 to facilitate his functioning as the Union Representative for IBT members employed by Pan American. By the terms of the pass, it was to be used solely for Union business.

Genoese's trip to Naples, Florida was not for Union business; the purpose of his trip was to engage in campaign activities. By using the air pass provided by Pan American World Airways, Genoese utilized a Local Union resource to pay for his campaign activities in violation of the *Rules*.

While at the Joint Council 41 meeting, Genoese distributed certain material relating to the size and composition of the IBT, the delegates to the 1991 IBT International Union Convention and the like. While such material did not on its face directly implicate his campaign for IBT General President, it was distributed in connection with a meeting held for the purpose of hearing the various candidates seeking the General President position. Thus the material must be considered campaign material. However the Election Officer investigation did not uncover the utilization of any Local Union resources in the preparation of such material.

The material was, however, distributed in a folder entitled "We are the Teamsters." The folder was prepared and paid for by the International Union.

¹The Election Officer's investigation determined that Genoese did not attend any Black Caucus meeting in Pennsylvania for purposes of his campaign or for any other purpose.

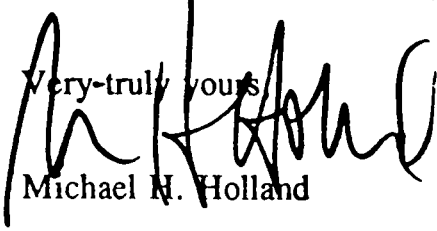
Phillip Feaster
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Utilization of the folder, at the cost to the International, for campaign purposes thus constitutes a violation of the *Rules*.

For the reasons set forth above the instant protest is **GRANTED** in part and **DENIED** in part. To remedy the violations of the *Rules* found in connection with Genoese's trip to the Joint Council meeting in Naples, Florida, Genoese is to reimburse the International for the costs of the folders in which he distributed his campaign material. By affidavit, to be submitted within ten (10) days of the date of this decision, Genoese shall state the number of folders distributed, the costs of each such folder and demonstrate that reimbursement has been made to the International for such costs. To the extent that Genoese is unable to determine the International costs for the folders, the Election Officer shall deem \$.50 per folder to be the appropriate amount for reimbursement.

To remedy his wrongful utilization of the Pan American pass for campaign purposes, Genoese is to reimburse Local Union 732 in the amount of \$338.00, which is the lowest tariff available for travel to and from New York City to Naples, Florida via Pan American World Airways or any other airline providing such service. Such reimbursement shall be made within ten (10) days of the date of this decision. Within the same ten (10) day period, Genoese is to file an affidavit with the Election Officer demonstrating, with appropriate documentation, that such repayment has been made.

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/mjv

cc: Frederick B. Lacey, Independent Administrator
Amy Gladstein, Regional Coordinator

Phillip Feaster
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Louis D. Riga

Walter Shea

Ron Carey

R.V. Durham
c/o Hugh Beins

Election Officer's decision. The Election Rules further provide that if an appeal is not taken from the Election Officer's decision, then that decision "shall become final and binding." Election Rules, Article XI, Section 1.a.(6).

Mr. Genoese did not forward a written request for a hearing to the Independent Administrator until August 6, 1991 -- some twenty days after the Election Officer's decision. Apparently, Mr. Genoese's written request for a hearing was prompted by an August 5, 1991, notice that he had received from the Election Officer concerning his failure to comply with the Election Officer's July 17, 1991, decision.

Mr. Genoese defends his delay in filing a written request for a hearing by claiming that twenty-four hours after receiving the Election Officer's July 17, 1991, decision, he "orally" communicated with the Office of the Independent Administrator his desire to appeal that decision. Mr. Genoese suggests that he did not appreciate the need to file a written request for a hearing and thought the oral request would suffice.

As noted, The Election Rules mandate that any request for a hearing before the Independent Administrator must be made in writing. Moreover, in the Election Officer's decision he specifically reminded Mr. Genoese that if he wished to appeal he must request a hearing "in writing." Thus, Mr. Genoese's "oral"

request for a hearing does not satisfy the appeal requirements of the Election Rules.¹

Notwithstanding the fact that Mr. Genoese's appeal was untimely, the merits of his appeal will be addressed. As this matter involves the all-important issue of campaign contributions, it is useful to revisit the Election Rules' limitations on that subject. Moreover, I find that Mr. Genoese did not act intentionally to delay his appeal and there is no prejudice to be suffered by any party by considering the merits at this stage.

THE MERITS OF THE APPEAL

Mr. Genoese is currently a candidate for International Vice President. In April 1991, Mr. Genoese was a candidate for International General President. At that time, Mr. Genoese flew to Naples, Florida to attend a meeting of IBT Joint Council 41 at which candidates for General President were invited to participate in a "candidates forum."

The Election Officer's investigation revealed that Mr. Genoese travelled to Florida via a pass provided to him by Pan American for his use as Chief Executive Officer of Local Union 732 in representing IBT members employed by Pan American.²

¹ Certainly, Mr. Genoese must have realized that his alleged "oral appeal" was ineffective when he did not receive a notice of hearing.

² During the Election Officer's investigation, Mr. Genoese claimed that he travelled to Florida on a pass provided to his
(continued...)

It is clear that Mr. Genoese's use of the Local 732 Pan American pass was not for Union business, but rather was for campaign purposes. Thus, the use of that pass violates the Election Rules. Article VIII, Section 10.(b) of the Election Rules prohibits a candidate from using the resources of the Union³ -- such as airline pass privileges for Union business -- to support campaign activity.⁴

At the candidates forum, material prepared by Mr. Genoese, such as letters, bulletins and memos, were distributed to those in attendance in a folder, the cover of which was emblazoned with the slogan -- "We Are The Teamsters." This folder was a general IBT promotional folder prepared and paid for by the IBT. Although the material within the folder did not, on its face, promote Mr. Genoese's candidacy for President, its distribution at the candidates forum clearly transformed it into campaign material.

²(...continued)

daughter -- an employee of Pan American. This claim was not substantiated by the Election Officer's investigation and, in fact, at the hearing before me, Mr. Genoese appeared to have abandoned this claim.

³ The Election Rules defines the term "Union" to mean "the International Union, all Local Unions and all other subordinate bodies" Election Rules, Definitions at p. A-8.

⁴ Mr. Genoese attempted to defend his use of the Local 723 Pan American pass by stating that while in Florida, he spoke with Union members about Union business. That Mr. Genoese may have had incidental conversations concerning Union business while he was in Florida does not change the fundamental premise that he travelled to Florida principally for campaign purposes.

The use of the IBT's folder to distribute the Genoese materials constitutes an improper use of Union resources for campaigning.

I reject Mr. Genoese's suggestion that he had no control over the distribution of his materials at the candidates forum. The Election Officer's investigation revealed that no other candidates' materials were contained in the IBT folder. Thus, the only conclusion that can be reached was that Mr. Genoese prompted the inclusion of his material in the folder and caused it to be distributed at the candidates forum.⁵

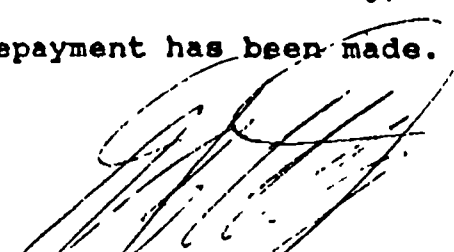
Accordingly, the decision of the Election Officer is affirmed in full and Mr. Genoese is directed to comply with the Election Officer's remedy.

Specifically, Mr. Genoese is to reimburse the IBT for the cost of the folders in which his campaign material was distributed. By Affidavit, to be submitted to the Election Officer within ten days of the date of this decision, Mr. Genoese shall state the number of folders distributed, the cost of each such folder and demonstrate that reimbursement has been made to the IBT for such costs. To the extent that Mr. Genoese is unable to determine the IBT's costs for the folders, the Election Officer has deemed \$0.50 per folder to be the proper amount for reimbursement.

Regarding the wrongful utilization of the Pan American pass, Mr. Genoese is to reimburse Local 732 in the amount of \$338, which,

⁵ Unfortunately, attempts to clarify this point with Mr. Genoese at the hearing did not prove fruitful. Mr. Genoese simply was not responsive to the inquiries put to him at the hearing.

the Election Officer's investigation revealed, was the lowest fare available for travel to and from New York City to Naples.⁶ This reimbursement shall be made within ten days of the date of this decision. Within that same ten day period, Mr. Genoese shall file an Affidavit with the Election Officer demonstrating, with appropriate documentation, that such repayment has been made.



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

Dated: August 13, 1991

⁶ Mr. Genoese argued that if his use of Local 732's pass was found improper, that the amount of reimbursement should be \$25 as this is the amount that he would have had to pay had he used his daughter's Pan American pass. This suggestion is rejected and the Election Officer's investigation regarding the lowest airfare will be used as the benchmark. The point is Mr. Genoese did not use his daughter's pass and any attempt to rely on the cost of that pass is without merit.