

OFFICE OF THE ELECTION OFFICER
INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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July 11, 1991

VIA UPS OVERNIGHT

Robert Marciel
Secretary-Treasurer
IBT Local Union 63
1616 W. Ninth St.
Room 205
Los Angeles, CA 90015

Gerald Moerler
13104 Glen Ct. #40
Chino Hills, CA 91709

Barry L. Clark
5893 Crescent Ave.
Buena Park, CA 90620

Richard Martino
Secretary-Treasurer
Teamsters Local 420
1221 N. Peck Rd.
S. El Monte, CA 91733

Scott T. Askey
c/o The Delegates
for Carey Slate
434 S. 2nd St. 1-A
Barstow, CA 92311

George P. Bravo
Secretary-Treasurer
IBT Local Union 208
9960 Baldwin Place
El Monte, CA 91731

**Re: Election Office Case Nos. P-780-LU63,208,420-CLA
P-787-LU420-CLA**

Gentlemen:

The above referenced protests have been filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules"). In the protests, Robert Marciel, Secretary-Treasurer of IBT Local 63, George P. Bravo Secretary-Treasurer of IBT Local 208, and Richard Martino, Secretary-Treasurer of IBT Local 460 allege that the Southern California Chapter of TDU, along with Scott Askey and Gerald Moerler, members of Local Union 63 and successful candidates for delegates from Local 63, and Barry Clark, an unsuccessful candidate for delegate from Local 420, have used the worksite lists obtained from their respective Locals for other than campaign purposes in violation of the *Rules*.

Mr Robert Marciel
Page 2

The protest was investigated by Regional Coordinator Geraldine Leshin and Adjunct Coordinator Michael Franklin. The investigation discloses worksite lists were furnished by each Local to Local members who were candidates for delegate to the 1991 IBT International Union Convention. Certain of those candidates, including Messrs. Askey, Moerler and Clark, were also members of the Southern California Chapter of Teamsters for a Democratic Union (TDU).

The evidence further shows that the candidates from the various Locals assisted each other in campaigning and exchanged worksite lists in furtherance of campaign activity. Barry Clark was given a worksite list from Local 63 by Gerald Moerler as well as a Local 208 worksite list by John McTeague. These lists were given to Clark so that he could assist the various candidates and slates in their campaign activities, e.g. by going to the worksites to campaign on their behalf. There is no evidence that the Southern California Chapter of TDU had any access to the worksite lists.

In early March, Clark phoned Local 420 member Paul Rebaric to request Rebaric's assistance with his, Clark's, campaign, Clark states that he believed Rebaric to be a campaign supporter at the time he talked with him. Clark acknowledges that during the phone conversation he asked Rebaric for money for his campaign. He denies that he asked for money in exchange for the worksite list.

Rebaric states that at the time of the phone conversation with Clark, he was not working. He recalls that he and Clark discussed various problems that Rebaric was having with Local Union 420 concerning his work opportunities. Rebaric was asked by Clark during the conversation to contribute \$25.00 to the delegate campaign.

Three days after the phone conversation Rebaric received campaign literature at his home in an envelope from the "420 Committee for the Rank and File." The envelope also contained the worksite lists for Locals 208, 63 and 420. Additionally, Clark sent Rebaric a note thanking him for his contribution and telling him to pass the worksite lists to any IBT member who was out of work.

Rebaric told Adjunct Franklin that he did not think that successful solicitation of a campaign contribution from him by Clark was in exchange for the worksite lists. Rather Rebaric said he believed that Clark was trying to help him find work and thus sent him the worksite lists to provide him with information as to where he could apply for a job

The *Rules* provide that all delegate candidates have a right to inspect and make notes from collective bargaining agreements or to have access to worksite lists arranged by employer name. The *Rules* state further that "such collective bargaining agreements or worksite lists are not to be inspected or used for the benefit of any employer or of any other labor organization or for any purpose other than campaigning for a delegate, alternate delegate or International Officer position. *Rules*, Article VIII, §1(a) (emphasis supplied)

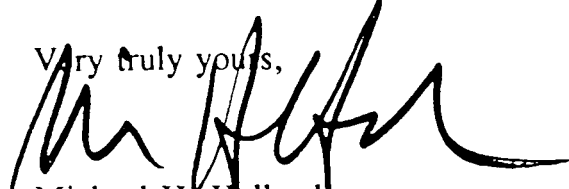
Mr. Robert Marciel
Page 3

Thus the furnishing of the lists to assist an unemployed IBT member with a job search is a violation of the *Rules*. The exchange of lists by the delegate candidates from the three Locals, exchanged to permit members of the other Locals to assist with campaigning, is not a violation of the *Rules* since the lists can be used for campaign purposes.

The *Rules* have been violated. To remedy the violation the 420 Committee for the Rank and File shall return all contributions received from any members who were furnished with a worksite list, but did not use such list for campaign purposes. The Committee shall return the campaign contribution received from Paul Rebaric. Barry Clark, as the head of the 420 Committee, shall file an affidavit within ten days of this decision listing the out of work members and other non-campaigners to whom the worksite lists were distributed, the contributions - if any - received from such members, and documentation that such contributions have been returned.

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
Geraldine Leshin, Regional Coordinator

IN RE:	:	91 - Elec. App. - 170 (SA)
ROBERT MARCIEL, GEORGE P. BRAVO and RICHARD MARTINO	:	:
and	:	DECISION OF THE INDEPENDENT ADMINISTRATOR
IBT LOCAL UNION NOS. 63, 208 and 420	:	:
and	:	:
BARRY CLARK, SCOTT T. ASKEY, and GERALD MOERLER	:	:

This matter arises out of an appeal from a decision of the Election Officer in Case Nos. P-780-LU63,208,420-CLA and P-787-LU420-CLA. A hearing was held before me at which the following persons were heard by way of telephone conference: the Appellant, Barry Clark; Kenneth Young, an attorney for Locals 208 and 63; Richard Martino, Secretary-Treasurer of Local 420; Geraldine Leshin, a Regional Coordinator; Michael Franklin, an Adjunct Regional Coordinator; and John J. Sullivan, an attorney on behalf of the Election Officer.

This matter concerns Article VIII, Section 1.d. of the Rules For The IBT International Union Delegate And Officer Election (the "Election Rules") which provides as follows:

[W]orksite lists are not to be inspected or used for the benefit of any employer or of any other labor organization or for any purpose other than campaigning for a delegate, alternate delegate or International Officer position.

In the original protests, Robert Marciel, Secretary-Treasurer of Local 63; George P. Bravo, Secretary-Treasurer of Local 208; and

Mr. Martino alleged that the Southern California Chapter of Teamsters for a Democratic Union ("TDU"), along with Scott Askey and Gerald Moerler (successful candidates for delegates from Local 63) and Barry Clark (an unsuccessful candidate for delegate from Local 420), have used worksite lists obtained from their respective Locals for purposes other than campaigning in violation of the Election Rules.

Messrs. Askey, Moerler and Clark all received worksite lists from their respective employers in connection with the election for delegates to the 1991 IBT International Convention. The Election Officer's investigation revealed, and this is not disputed, that candidates from various locals (including Messrs. Askey, Moerler and Clark) assisted each other in campaigning and exchanged worksite lists in furtherance of campaign activity. For example, Mr. Clark was given a worksite list from Local 63 by Mr. Moerler. Mr. Clark also received worksite list from another candidate at Local 208. These lists were exchanged so that the various delegate candidates, who were all politically aligned, could assist each other in their campaigns.

As noted, Article VIII, Section 1.d. of the Election Rules limits the use of worksite lists to campaign purposes. Thus, the fact that Mr. Clark may have received worksite lists from other locals does not, in and of itself, constitute a violation of the Election Rules, as long as Mr. Clark uses those lists for campaigning. Given that the delegate elections are complete, Mr. Clark, and others, can use those lists for campaigning on behalf of

International Officer candidates.

While Messrs. Askey, Moerler and Clark are all members of the TDU, the Election Officer's investigation did not reveal any evidence that the TDU had access to the worksite lists.

The one violation of the Election Rules that the Election Officer did find concerned Mr. Clark's distribution of worksite lists to an unemployed member of Local 420 -- Paul Rebaric. In early March of 1991, Mr. Clark phoned Mr. Rebaric to request Mr. Rebaric's assistance with Clark's campaign. Mr. Rebaric reported to the Election Officer that during that telephone conversation Mr. Clark was told by Mr. Rebaric that he was having problems finding work within Local 420's jurisdiction. Three days after the telephone conversation Mr. Rebaric received campaign literature at his home in an envelope from the "420 Committee For The Rank-and-File." Mr. Clark heads that Committee. The envelope also contained worksite lists for Locals 208, 63 and 420. Mr. Clark also included a note telling Mr. Rebaric to pass the worksite lists on to any IBT member who was out of work. The Election Officer's investigation did not reveal a further distribution of the worksite lists by Mr. Rebaric. Notwithstanding the fact that Mr. Rebaric never made a contribution to Mr. Clark or to the "420 Committee For The Rank-and-File." Mr. Clark also sent Mr. Rebaric a form letter thanking him for his contribution.

Mr. Rebaric stated to the Election Officer that he believed that Mr. Clark was trying to help him find work and this was the reason why he was sent the worksite lists. At the hearing, Mr.

Clark initially indicated that he sent Mr. Rebaric the worksite lists in the belief that Mr. Rebaric would use the worksite lists to campaign on his behalf. At the hearing, however, Mr. Clark's statements were inconsistent. At one point he stated that it was his hope that while Mr. Rebaric was visiting the worksites to look for a job, he could also do some campaigning. At yet another point, Mr. Clark argued that as a member of the IBT, he had the right to help out a fellow member who was unemployed.

Given Mr. Rebaric's version of events as well as Mr. Clark's own inconsistent statements, I conclude that Mr. Clark provided Mr. Rebaric the worksite lists not for campaign purposes, but rather to help Mr. Rebaric find a job.¹

In providing Mr. Rebaric with the worksite list for purposes other than campaigning, Mr. Clark violated the Election Rules.

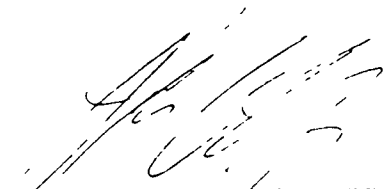
As a remedy, the Election Officer ordered the 420 Committee For The Rank-and-File to return all contributions received from any member who was furnished with a worksite list, but did not use such list for campaign purposes. The Committee was also ordered to return any campaign contribution received from Paul Rebaric. At the hearing, however, Mr. Clark stated that Mr. Rebaric was the only unemployed individual that was provided a worksite list. The Election Officer corroborated this when he stated that his investigation did not reveal any other violation of the prohibition

¹ I am satisfied, however, that Mr. Clark did not supply the list as quid pro quo for a campaign contribution. As noted, Mr. Rebaric never made a campaign contribution to Mr. Clark or his committee.

on the distribution of worksite lists. Moreover, as already stated, Mr. Rebaric made no contribution to Mr. Clark or his Committee. Thus, there is nothing to refund.

The remedy, as originally imposed by the Election Officer, is no longer effective given that there was no additional misuse of worksite lists and there were no campaign contributions to be refunded. Nonetheless, by virtue of this decision, Mr. Clark and the 420 Committee For The Rank-and-File is hereby on notice that any further violations of Article VIII, Section 1.d. of the Election Rules will result in the matter being referred to the United States Attorney for the Southern District of New York for appropriate contempt proceedings.

The Election Officer's finding of an Election Rules violation is affirmed and the remedy is modified as reflected herein.



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

Dated: July 19, 1991