

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

Michael H. Holland
Election Officer

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August 14, 1991

VIA UPS OVERNIGHT

Thomas W. Cloney
117 Mifflin Street
Philadelphia, PA 19148

John P. Morris
Secretary-Treasurer
IBT Local Union 115
2833 Cottman Avenue
Philadelphia, PA 19149

Re: Election Office Case No. P-798-LU115-PHL

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Thomas W. Cloney. In his protest, Mr. Cloney contends that the *Rules* were violated by the campaign support afforded John P. Morris, a nominated candidate for IBT International Union Vice President from the Eastern Conference, by the Philadelphia Council of the AFL-CIO ("Philadelphia Council") and its member local unions, particularly Local 1776, United Food and Commercial Workers ("Local 1776").

The protest was investigated by Adjunct Regional Coordinator Julius Uehlein. In addition to the protestor, and Mr. Morris, Mr. Uehlein contacted Edward F. Toohey, President of the Philadelphia Council and Wendell W. Young, III, President of Local 1776 and requested that they present any information they might have relative to the allegations of the protest. A representative of Local 1776 met with Mr. Uehlein regarding the facts and circumstances underlying the protest.

At the May 8, 1991 meeting of the Philadelphia Council, the President of the Council reported that John P. Morris was running for IBT International Union Vice President from the Eastern Conference. The minutes of the meeting also demonstrate that a fundraising event with respect to Mr. Morris' candidacy was discussed: "All of the Unions will be contacted and will be urged to buy tickets for a fundraising event." Mr. Morris was present at the meeting; the minutes reflect that he spoke during the meeting.

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Subsequently, and in accordance with the meeting of May 8, 1991, as reflected in the minutes of that meeting, Edward F. Toohey, as President of the Philadelphia Council, sent a letter, dated May 13, 1991, addressed to all Local Unions. The letter was printed on letterhead of the Philadelphia Council and signed by Mr. Toohey in his capacity as President of that organization.¹ The body of the letter read as follows:

No one better represents their membership and the labor movement than our friend, John P. Morris, President of the Pennsylvania Conference of Teamsters.

Besides his many other activities, John is also a candidate for Regional Vice President of the Teamsters Eastern Conference.

We all know John as an experienced, aggressive leader of his local union and the State Conference. He has helped us all over the years, and, in appreciation for this assistance and to honor John for being a fighter for labor causes, we have set aside Thursday, June 6, 1991, from 5:0030 to 9:30 p.m. as John P. Morris Night.

U.F.C.W. Local 1776 has agreed to host this affair at their meeting hall at 3031 Walton Road, Norristown, Pennsylvania (right off exit 25 of the Pennsylvania Turnpike). Food and refreshments will be available. Plan to be with us to honor John.

Tickets are \$50.00 and checks should be made payable to the John P. Morris Committee.

All contributions were sent to the offices of Local 1776. If a contribution was received in the form of a check drawn on any particular labor organization's account, the check was returned to the sender accompanied by a letter written on the stationery of Local 1776 and signed by Mr. Young as the President of Local 1776. The letter read in pertinent part as follows:

¹ Mr. James Smith, an IBT member and Mr. Morris' authorized representative, stated that he had notified Mr. Toohey prior to May 13, 1991 that no solicitation should be printed on the letterhead of the Philadelphia Council of the AFL-CIO and that all solicitations should contain a disclaimer indicating that contributions from labor organization funds were prohibited.

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Your check is being returned because union dues/per capita funds can not be used to support individuals seeking an elected union office, as per the rules set down by the Teamsters organization. The proceeds of the "John P. Morris" night will raise funds for John in his campaign for International Teamsters Vice President.

A personal check would be acceptable and appreciated. Please make your check payable to "John P. Morris" Committee and forward to my office.

The fundraiser was held on June 6, 1991 at the meeting hall of Local 1776. To date, there has not been a full accounting of the costs or proceeds of the event. The Philadelphia Council paid for all expenses associated with the costs of Mr. Toohey's mailings - encompassing clerical help, stationery and postage. The rental fee for the Local 1776 meeting hall, the costs of the food and other refreshments served at the fundraising event as well as the expenditures incurred by Local 1776 were paid by Local 1776 or the proceeds of the event. Both Local 1776 and the Philadelphia Council are to be reimbursed for their expenditures or remaining expenses from the proceeds of the event with any excess funds being forwarded to Mr. Morris for use in his campaign for International Union Vice President. Mr. Morris has not yet received any monies that were raised in connection with the "John P. Morris Night."

The *Rules* prohibit in Article X, § 1(b)(1) all labor organizations from contributing anything to any campaign of any candidate for International office, with but one exception not relevant here. The prohibition which mirrors the analogous provision of the Labor Management Reporting and Disclosure Act, includes a ban on the contribution and use of such labor organization's stationery, equipment, facilities and personnel, as well as strictly monetary contributions. All labor organizations, including those not affiliated with the IBT, are covered by the prohibition,. The scope of the prohibition extends to labor organization associations and federations such as the AFL-CIO and its subordinate bodies such as the Philadelphia Council . See, e.g., Marshall v. Steelworkers Local 1557, 77-(LM)-165 No. 77-599(W.D.Pa.,1977).

The first issue that needs to be addresses is whether sponsorship of a fundraising event by a person or entity otherwise prohibited under the *Rules* from making campaign contributions violates the *Rules*. Under the *Rules*, a contribution of "any material thing of value" is defined as a campaign contribution. *Rules*, Definitions ¶ 6 at A-2. In this case, the fundraising event was sponsored by the Philadelphia Council and solicitations were made by it to all its affiliated labor organizations. Under these circumstances, the Election Officer concludes that the sponsorship and solicitation by the Philadelphia

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Council and the participation and communications from Local 1776 contributed something of value to Mr. Morris' campaign for International Union Vice President.

The solicitation extolled Mr. Morris' virtues and urged contributions for his campaign; the Local 1776 letter returning organizational checks encouraged the individual officers of the labor organizations to replace the improper check with personal contributions. The sponsorship and nature of the solicitations clearly have the foreseeable effect of gaining contributions for Mr. Morris, contributions that he might not have received by for the sponsorship and endorsement by the Philadelphia Council. Potential contributors - and particularly, officers of labor organizations affiliated with the Philadelphia Council - may have decided to contribute because of their organizational affiliation or to gain favor with the officers of the Council. The recipients of the solicitation in this case may well have been more willing to contribute because of the sponsorship and solicitation by the Philadelphia Council. Therefore, the sponsorship and solicitation by the Philadelphia Council of a fundraising event for a candidate for International office in the IBT violated the *Rules*, regardless of the identity of the person or entity who paid the expenses connected with the fundraising event.

In the instant case, however, the expenses connected with the fundraising event were paid - or at least advanced - by the Philadelphia Council and/or Local 1776, entities prohibited from making campaign contributions under the *Rules*. Further, the contributions received, which will be used as reimbursement for the expenditures for the event, result from the improper sponsorship and solicitations, which the Election Officer has found to constitute a violation of the *Rules*. But for such sponsorship and solicitations, the very contributions which will be utilized as reimbursement might not have been made. Accordingly, to permit those funds to be used to pay for a campaign event would itself be violative of the *Rules*.

In this case, an entity otherwise prohibited from making campaign contributions under the *Rules*, sponsored a fundraising event and solicited contributions to that event. Because the sponsorship and solicitation was improper, none of the monies received from such sponsorship or solicitation may be utilized for campaign purposes. Although Mr. Morris has not received any actual monies from the "John P. Morris Night," the monies improperly solicited were used to fund a campaign event on his behalf. The event, the "John P. Morris Night," was a campaign event and must under the *Rules* be funded appropriately.²

² The *Rules* would not prohibit Mr. Toohey or Mr. Young, if they are not otherwise employers or representatives of employers, from personally contributing or soliciting contributions for Mr. Morris' campaign. Further Messrs. Toohey and Young could be identified in any solicitation by their labor organization affiliations and positions as long as the solicitation stated that the organizational affiliation and position was for

Neither the invitation nor the solicitation sought contributions earmarked for legal and accounting services under Article X, § 1(b)(2) of the *Rules*. Further, none of the contributions received were so earmarked. Accordingly, it is inappropriate to permit the candidate and/or his campaign to utilize the contributions received in any way. Only contributions received in response to solicitations for legal or accounting funds or so earmarked by the contributor at the time the contribution is made may be deposited in any candidate's segregated legal and accounting fund.

To remedy the violations of the *Rules* discussed above, the Election Officer orders the following:

1. John P. Morris, or his campaign committee, shall within 15 days of this decision, obtain from the Philadelphia Council and or Local 1776 a full accounting of all expenses associated with the June 6, 1991 "John P. Morris Night." Such accounting shall include the costs of stationery, postage, clerical help, the rental the Local 1776 meeting hall, food and other refreshments as well as other out-of-pocket or in-kind costs incurred by the Philadelphia Council and/or Local 1776 in connection with the June 6, 1991 "John P. Morris Night." Within 24 hours thereafter, John P. Morris shall forward a copy of such accounting(s) to the Election Officer.
2. John P. Morris, or his campaign, shall, within 15 days of receiving the accounting from the Philadelphia Council and/or Local 1776, reimburse such organizations for all expenses incurred by them in connection with the June 6, 1991 "John P. Morris Night." John P. Morris shall simultaneously file an affidavit with the Election Officer, accompanied by appropriate documentation, demonstrating that he has reimbursed the Philadelphia Council and Local 1776 for all expenses paid or to be paid by that organization in connection with the June 6, 1991 "John P. Morris Night."
3. The Philadelphia Council and all labor organizations affiliated with it shall cease and desist from engaging in like or related campaign activities or making like or related campaign contributions to John P. Morris as a candidate for IBT International Union Vice President or to any other candidate for IBT International Union officer.

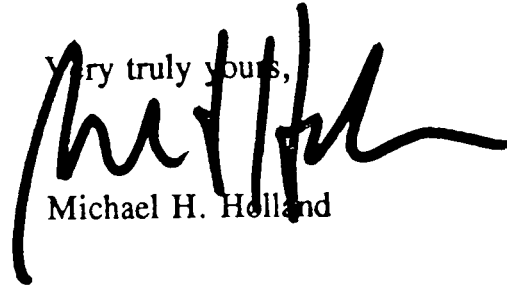
If any interested party is not satisfied with this determination, they may request a hearing before the Independent Administrator within twenty-four (24) hours of their receipt of this letter. The parties are reminded that, absent extraordinary circumstances, no party may rely upon evidence that was 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

identification purposes only.

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& 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,

A handwritten signature in black ink, appearing to read "Michael H. Holland", written over the typed name below.

Michael H. Holland

MHH/cdk

cc: Frederick B. Lacey, Independent Administrator
Peter V. Marks, Sr., Regional Coordinator
Philadelphia Council, AFL-CIO
Local 1776, United Food and Commercial Workers