

***PRE-ELECTION  
PROTEST  
DECISIONS***

***ELECTION OFFICE CASE NOS.***

***P-936-IBT to P-970-LU714-CHI***

***VOLUME XXII***

***Michael H. Holland  
Election Officer  
June 1992***

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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October 11, 1991

**VIA UPS OVERNIGHT**

Terence F. Majka  
Secretary-Treasurer, IBT Local Union 182  
5 Rutger Park  
Utica, New York 13501

Erv Walker  
c/o IBT Local Union 449  
1685 Elmwood Avenue  
Buffalo, New York 14207

Al Soaglione  
Administrator, N.Y. State  
Teamsters Health and Hospital Fund  
7 Rutger Park  
Utica, New York 13501

Josephine Russo  
Ann Colagerio  
N.Y. State Teamster  
Health and Hospital Fund  
7 Rutger Park  
Utica, New York 13501

Everett Campbell  
Secretary-Treasurer  
IBT Local Union 317  
566 Spencer Street  
Syracuse, New York 13204

**Re: Election Office Case No. P-936-IBT**

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Terrence Majka, Secretary-Treasurer of Local Union 182. In his protest, Mr. Majka alleges that Erv Walker, a nominated candidate for IBT International Union Vice President at Large and a member of the R.V. Durham Unity Team slate violated Article X, §1 of the *Rules* by soliciting, accepting and utilizing campaign contributions from an employer. Specifically, Mr. Majka claims that supervisory employees of the New York State Health and Hospital Fund ("*Fund*"), an employer within the meaning of the *Rules*, made campaign contributions to Mr. Walker's campaign by (1) soliciting employees of the fund to purchase raffle tickets for the benefit of Mr. Walker's campaign and (2) wearing campaign buttons and posting campaign literature for Mr. Walker and the R.V. Durham Unity Team slate. The protest was investigated by Regional Coordinator William Kane.

The Fund is a multi-employer health and welfare fund established and maintained pursuant to §302 of the National Labor Relations Act and the Employee Retirement

Income Security Act. Mr. Walker is one of the Union appointed Trustees of the Fund. The Fund employs between 48 and 70 full-time employees. It is thus both an employer and a trust within the meaning of Article X, §1 of the *Rules*. Accordingly, the Fund may not contribute to any International Union officer election campaign and no candidate for International Union office may accept or utilize contributions from the Fund. See Election Office Case No. P-291-LU70 & 278-CSF, affirmed 91-Elec. App.-106, affirmed United States of America v IBT, 88 Civ 4486 (S.D.N.Y. slip opinion, May 13, 1991).

Approximately one-half of the Fund employees are presently members of IBT Local Union 182. The remaining employees, while previously members of the Local, are no longer members in good standing, having been suspended from membership for non-payment of dues. There is presently pending before the National Labor Relations Board an unfair labor practice complaint alleging that the National Labor Relations Act was violated by requiring Fund employees to become and remain members of Local 182. Apparently, pending the final resolution of that complaint, certain employees of the Fund have elected to discontinue active membership in the IBT; other Fund employees have elected to remain IBT members. See Election Office Case No. Post 21-LU243-MGN, affirmed 91-Elec. App.-127.

The Administrator of the Fund is Al Soaglione. Working directly under Mr. Soaglione is Josephine Russo, whose job title is Assistant Administrator. Other supervisory employees of the Fund report to Ms. Russo who, in turn, reports to Mr. Soaglione. Ms. Russo, like Mr. Soaglione, has a private office in the Fund's offices. Ann Colagerio, whose job title is clerk, performs certain secretarial functions for Ms. Russo and functions as Ms. Russo's assistant. Neither Mr. Soaglione, Ms. Russo nor Ms. Colagerio are presently members of the IBT. Both Ms. Russo and Ms. Colagerio have worn and continue to wear campaign buttons supporting Mr. Walker's candidacy and the candidacy of R.V. Durham for General President of the IBT. In addition, Ms. Russo has material posted in her office also supportive of the candidacies of the members of the R.V. Durham Unity Team slate.

After discussion by and between Ms. Russo and Mr. and/or Mrs. Walker, Mr. Walker provided Ms. Russo with raffle tickets for her to sell, the receipts from which were to benefit Mr. Walker's campaign. The raffle tickets cost \$10 each and indicate that the raffle is being sponsored by the Committee to Elect Erv Walker. Ms. Russo provided some of the raffle tickets to Ms. Colagerio. Both Ms. Russo and Ms. Colagerio solicited other Fund employees to buy such tickets. Approximately fifteen (15) tickets were sold by them to other Fund employees. The Election Officer investigation uncovered no evidence that any Fund employees were threatened or otherwise coerced with respect to purchasing such raffle tickets.

The *Rules* prohibit any employer or employer representative from making campaign

contributions to any candidate for International Union office. Employer representatives include all employees who have supervisory or managerial responsibility on behalf of the employer. See Advisory on Campaign Contributions and Disclosure issued August 14, 1991, ("Advisory") at pages 11-12. Any direct or indirect contribution where the purpose, object or foreseeable affect is to influence the election of a candidate is a campaign contribution within the meaning of the *Rules*. *Rules*, Definitions at ¶6.

Ms. Russo is both a supervisor and a manager within the meaning of the *Rules*. Since she is not an IBT member she is prohibited from making campaign contributions as an employer representative. Campaign fund solicitation is a campaign contribution within the meaning of the *Rules*. See Election Office Case No. P-651-IBT, affirmed 91-Elec. App.-183. While the Election Officer investigation found no intimidation or coercion in the raffle sales solicitation which occurred among Fund employees, solicitation of an employee by one who has supervisory or managerial authority over the employee being solicited is likely to facilitate the fund-raising efforts.

Ms. Colagerio's job title is clerk. The Election Officer does not find that she has any actual supervisory or managerial authority over other Fund employees. However, she acts as Ms. Russo's secretary and is understood by other Fund employees to be Ms. Russo's assistant. Her solicitation of other Fund employees seeking to sell them raffle tickets was done in conjunction with Ms. Russo's solicitation. While Ms. Colagerio is not herself a supervisor or manager, she is viewed as being Ms. Russo's agent. Given the simultaneous and identical fund-raising effort by both Ms. Russo and Ms. Colagerio, Fund employees would be likely to perceive that the solicitation was, in effect, being made by their supervisor and manager, that Ms. Colagerio was acting on behalf of Ms. Russo. Since Ms. Colagerio is not an IBT member her sale of campaign raffles on behalf of Mr. Walker under the facts of this case constitutes a violation of the *Rules*.

Ms. Russo's and Ms. Colagerio's wearing of campaign buttons, and Ms. Russo's posting of campaign literature, also constitute employer campaign contributions on behalf of Mr. Walker, Mr. Durham and the R. V. Durham Unity Team slate in violation of the *Rules*. While all IBT members may support any candidate for IBT International Union office, and have the right to wear campaign buttons and post campaign literature proclaiming that support, neither Ms. Russo nor Ms. Colagerio are IBT members. They are an employer representative and an agent of an employer representative respectively. Further, they are proclaiming their support for particular candidates to and among IBT members and other employees over whom Ms. Russo has supervisory and managerial authority. Ms. Russo can impact upon such members' and employees' terms and conditions of employment. As Ms. Russo's secretary or assistant, Ms. Colagerio is likely to be viewed by other Fund employees as being able to affect Ms. Russo and thus also impact through Ms. Russo such employees' terms and conditions of employment.

A supervisor or managerial employee's open demonstration of support for a particular

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candidate has a naturally coercive impact. Accordingly the *Rules* are violated when such support is demonstrated in work areas and among employees who are affected by the supervisor's or manager's employment related decisions.

The *Rules* have been violated. The protest is GRANTED. To remedy the violation, the following relief is provided:

1. Ms. Russo, Ms. Colagerio and all other supervisory employees of the Fund are ordered to cease and desist from making campaign contributions to Erv Walker, R. V. Durham, the R. V. Durham Unity Team slate or any other candidates or slates of candidates for IBT International Office.

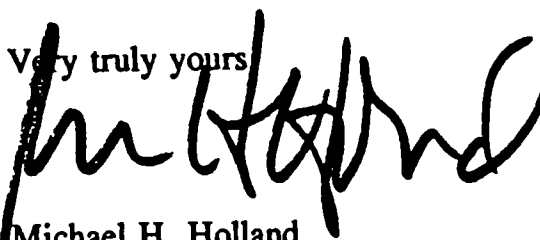
2. Ms. Russo and Ms. Colagerio and all other supervisory and managerial employees of the Fund are ordered to cease and desist from wearing campaign buttons or posting campaign literature in or at the Funds offices.

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3. To help ensure that all Fund employees who are members of the IBT are aware that they have the right to support any candidate for IBT International Union office without fear of reprisal or adverse employment impact, Mr. Soaglione, the Administrator of the Fund, shall sign the notice appended to this letter, duplicate it and post it on all bulletin boards in the Fund's offices. The notice shall be posted within five (5) days of the date of this letter and shall remain posted through December 10, 1991. Mr. Soaglione shall submit to the Election Officer within five (5) days of the date of this letter, a affidavit demonstrating that the notice has been signed and the posting has been accomplished.

4. The Committee to Elect Erv Walker shall, within fifteen (15) days of the date of this letter, return all contributions received from the sale of raffle tickets among employees of the Fund. See Election Office Case No. P-651-IBT, affirmed 91-Elec. App.-183. The Committee to Elect Erv Walker shall file an affidavit with the Election Officer within the same fifteen (15) day period setting forth in detail its compliance with this requirement including a list of all contributions returned delineating the amount so returned and the individuals to whom such monies were 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/ca

cc: Frederick B. Lacey, Independent Administrator  
William B. Kane, Regional Coordinator

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Ron Carey  
c/o Richard Gilberg, Esquire  
Cohen, Weiss & Simon  
330 West 42nd Street  
New York, NY 10036-6901

R. V. Durham  
c/o Hugh J. Beins, Esquire  
Beins, Axelrod, Osborne  
& Mooney  
2033 K St., NW  
Suite 300  
Washington, D.C. 20006-1002

Walter Shea  
c/o Robert Baptiste, Esquire  
Baptiste & Wilder  
1919 Pennsylvania Avenue, N.W.  
Suite 505  
Washington, D.C. 20006

**NOTICE TO TEAMSTER MEMBERS  
FROM AL SOAGLIONE, ADMINISTRATOR  
NEW YORK STATE TEAMSTER HEALTH AND HOSPITAL FUND**

You have the right to support any candidate or slate of candidates for International office in the IBT. You have the right to refrain from supporting any candidate or slate of candidates for International office in the IBT.

Your support, or failure to support, any candidate or slate of candidates will have no adverse impact upon you or your position with the New York State Teamster Health and Hospital Fund. No disciplinary action will be taken against you because of your support or lack of support for any candidate or slate of candidates. Your salary level, position and/or promotional opportunities will not be adversely affected because of your support or lack of support for any candidate or slate of candidates.

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Al Soaglione  
Administrator

***This is an official notice and must remain posted until December 10, 1991, and must not be altered, defaced, or covered with any other material.***