

OFFICE OF THE ELECTION OFFICER
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Michael H Holland
Election Officer

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October 14, 1991

VIA UPS OVERNIGHT

Robert McGinnis
6319 South Lavergne
Cicero, Illinois 60638

Marvin Gittler, Esquire
Asher, Gittler, Greenfield, Cohen
& D'Alba, Ltd.
Two North LaSalle Street
Chicago, Illinois 60602

William Joyce
Secretary-Treasurer
IBT Local Union 710
4217 South Halsted Street
Chicago, Illinois 60609

Re: Election Office Case No. P-956-LU710-CHI

Gentlemen:

This is a protest filed pursuant to the *Rules* for the IBT International Union Delegate and Officer Election, revised August 1, 1990 ("*Rules*"). The protester, Robert McGinnis, is a supporter of the Ron Carey Slate and a member of IBT Local 710. The gravamen of his protest is that Local 710 improperly employed attorneys to represent its interests in the hearing before the Independent Administrator on the appeal of Election Office Case No. P-873-LU-710-CHI, affirmed 91-Elec. App.-197.¹

¹ Insofar as the protest alleges improprieties on the part of the Election Officer and his counsel, the Election Officer immediately provided a copy of the protest to the Independent Administrator for his information and review. Insofar as the protest alleges that the Chicago Regional Coordinator and her staff are biased, those issues have previously been reviewed and decided by both the Election Officer and the Independent Administrator. See Election Office Case No. Post 41-LU710-CHI, affirmed 91-Elec. App.-150.

The original protests in Election Office Case No. P-873-LU710-CHI alleged that International General President candidate Walter Shea was given campaign access to the property of four Chicago-area employers of IBT members. The protest resulted in a ruling that other International Union officer candidates would be allowed similar access to those employer worksites to campaign for similar periods of time. One candidate for International Union General President already availed himself of this opportunity.

Despite this result, the original protesters appealed the decision of the Election Officer to the Independent Administrator. In their appeal to the Independent Administrator, the protesters raised an issue regarding various Local 710 officials who accompanied the Shea campaign visits, alleging that these officials were campaigning during their working time and that such campaigning was not incidental to their work. The protesters sought relief for these violations against Local 710.

Accordingly, when the case was heard before the Independent Administrator, Local 710's attorney, Marvin Gittler, appeared on behalf of the Local. The instant protest contests the propriety of Mr. Gittler's representation of Local 710, arguing that the Local Union officials involved should have engaged their own counsel and that the attorney so engaged should have been someone other than Mr. Gittler. Mr. McGinnis further contends that the *Rules* were violated if, and to the extent that, Mr. Gittler was compensated for his services by Local 710.


The protest has no merit. Since the protestors sought relief against Local 710, the Local was entitled to employ an attorney as its representative. Nothing in the *Rules* prohibits this. See Election Office Case No. P-747-LU63-CLA. The *Rules* prohibit the Local's provision of legal service to provide partisan support for a candidate or his/her campaign, but the allegations in this case were also made against the Local as an entity. While the protesters in the instant protest case express "surprise" that Mr. Gittler first appeared in their appeal to the Independent Administrator, it was only at that stage that they squarely sought relief against Local 710. For all of these reasons, 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)

² In response to this allegation, Local 710 presented evidence that the Union officials involved utilized vacation days during the time they were campaigning.

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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/cb

cc: Frederick B. Lacey, Independent Administrator

Julie E. Hamos, Regional Coordinator (For Information Only)

 IN RE:

ROBERT MCGINNIS

and

LOCAL UNION 710

and

MARVIN GITTLER, ESQ.

91 - Elec. App. - 211 (SA)

DECISION OF THE
INDEPENDENT ADMINISTRATOR

This matter arises as an appeal from the Election Officer's decision in Case No. P-956-LU710-CHI. A hearing was held before me by way of teleconference at which the following persons were heard: the Complainant, Robert McGinnis; Marvin Gittler, an attorney on behalf of Local Union 710; and John J. Sullivan and Barbara Hillman, on behalf of the Election Officer. The Election Officer submitted a written Summary in accordance with Article XI, Section 1.a.(7) of Rules for the IBT International Union Delegate and Officer Election (the "Election Rules"). In addition, Mr. McGinnis forwarded a letter and some documents prior to the hearing.

On October 4, 1991, a decision was issued in In Re: Gabriel, 91 - Elec. App. - 197 (SA), affirming the Election Officer's denial of a protest involving allegations that four employers of IBT members in the Chicago area extended rights of access to some but not all candidates running in the IBT International Officer election. As stated in the Gabriel matter:

The impetus behind this appeal was apparently the belief by McGinnis and other members of Local 710 that the Union Officers who campaigned at these facilities did so on Union time in violation of the Election Rules.

In the instant protest, Mr. McGinnis takes issue with the fact that Mr. Gittler appeared at the Gabriel hearing on behalf of Local 710. Mr. McGinnis asserts that only the Union Officers that he alleged were campaigning on Union time were implicated in the Gabriel protest and thus, the Local should not have paid for Mr. Gittler's time in defending those Officers. He suggests that the Officers should be held personally responsible for Mr. Gittler's fees.

Mr. McGinnis' position is without merit. The Election Rules prohibit a Local from using its resources to provide legal services for the partisan benefit of a candidate and his/her campaign. In the Gabriel matter, it was suggested that Local Union Officers were campaigning on Union time. Such an allegation clearly implicates the Local and thus it is entitled to legal representation to defend against such allegations.

Indeed, Mr. Gittler has already been sensitized to this issue. The Independent Administrator, in another matter, found that Local 710 had improperly paid for Mr. Gittler's representation. In In Re: McGinnis, 91-Elec. App.-150 (SA) (May 16, 1991), it was found that Mr. Gittler appeared as an advocate on behalf of a particular slate of candidates who were then seeking election as delegates to the IBT International Convention. Under those circumstances the Local could not pay for Mr. Gittler's time. What we had in the

Gabriel matter, however, was something different -- the Local's interests were clearly implicated there.

In pressing his argument regarding Mr. Gittler's participation in the Gabriel matter, Mr. McGinnis makes much of the fact that Mr. Gittler was not forwarded a copy of the "Notice of Hearing" in that case. This has absolutely no bearing on the issue at hand. Oftentimes, attorneys appear before the Independent Administrator on election appeals even though they are not served with a Notice of Hearing. What obviously happens in those cases is that the parties contact their attorneys when served with a Notice of Hearing and the attorneys then enter their appearance. Such a practice is neither unusual nor suspect.

In this protest, Mr. McGinnis also attempts to attack the decision in the Gabriel matter by alleging a conflict of interest on behalf of the Election Officer and his staff. Mr. McGinnis first suggests that Mr. Gittler and the Election Officer "served as co-attorneys in cases." Whether or not this is true has no bearing on the Election Officer's treatment of the Gabriel matter. In this connection I note that the Election Officer is a labor attorney from Chicago as is Mr. Gittler. Again, it would not be unusual or suspect for the two to have interacted on some cases prior to the Election Officer's commencement of his tenure. This does not, however, lead to a conclusion that the Election Officer is somehow biased in favor of Mr. Gittler.

Darting off on another tangent, Mr. McGinnis makes certain statements regarding an alleged loan that Mr. Gittler had secured for a Local Union officer in the Chicago area. Mr. Gittler denied these allegations and, in fact, stated at the hearing that he had no idea as to what Mr. McGinnis was referring to. In any event, I can find no connection between these allegations and the issues presented in this appeal.

Mr. McGinnis also raises an allegation regarding the Election Officer's Regional Coordinator, Julie Hamos. The allegations regarding Ms. Hamos' impartiality have been raised several times in the past by the same small group of Teamsters, including Mr. McGinnis, from the Chicago area. The Independent Administrator has consistently rejected any suggestion that there is a conflict of interest on Ms. Hamos' part or any wrongdoing on the part of Ms. Hamos or Mr. Holland. See In Re: McCormick, 91 - Elec. App. - 164 (SA) (June 27, 1991).

Mr. McGinnis' suggestion that the Election Officer and his staff have treated the political activists in Locals 710 and 705 (both Chicago Locals) unfairly is ludicrous and wholly unsupported by the exemplary record developed by the Election Officer. A survey of all decisions issued by the Independent Administrator on election appeals to date reveals that 19 involved Locals 710 and 705. See In Re: Coleman, 90 - Elec. App. - 18 (SA) (December 14, 1990); In Re: McGinnis, 90 - Elec. App. - 29 (January 3, 1991); In Re: Coleman, 91 - Elec. App. - 39 (January 17, 1991); In Re:

McGinnis, 91 - Elec. App. - 43 (January 23, 1991); In Re: McGinnis, 91 - Elec. App. - 46 (SA) (January 29, 1991); In Re: Golubovic, 91 - Elec. App. - 73 (SA) (February 19, 1991); In Re: Tuffs, 91 - Elec. App. - 96 (SA) (March 15, 1991); In Re: Lozanski, 91 - Elec. App. - 97 (SA) (March 15, 1991); In Re: Ellis, 91 - Elec. App. - 107 (SA) (March 25, 1991); In Re: Geoghegan, 91 - Elec. App. - 117 (SA) (April 3, 1991); In Re: McGinnis, 91 - Elec. App. - 150 (SA) (May 16, 1991); In Re: Tuffs, 91 - Elec. App. - 161 (SA) (June 12, 1991); In Re: McCormick, 91 - Elec. App. - 164 (SA) (June 27, 1991); In Re: Pedersen, 91 - Elec. App. - 174 (SA) (August 9, 1991); In Re: Cook, 91 - Elec. App. - 180 (SA) (September 6, 1991); In Re: Tuffs, 91 - Elec. App. - 191 (SA) (September 24, 1991); In Re: Gabriel, 91 - Elec. App. - 197 (SA) (October 4, 1991); In Re: Ellis, 91 - Elec. App. - 199 (SA) (October 8, 1991); and In Re: Cook, 91 - Elec. App. - 200 (SA) (October 10, 1991).

In some of these 19 appeals, decisions were issued against Mr. McGinnis and his political allies. This was not done because of any taint or conflict. Adverse decisions were issued because the claims raised were meritless. See, e.g., In Re: McGinnis, 91-Elec. App.-46 (SA) (January 29, 1991) (McGinnis complained that Local had acted improperly by mailing delegate nomination notices separately from delegate election notices, despite the fact that nothing in the Election Rules prohibits a separate mailing, and despite the fact that a separate mailing "may well ensure broad Union member

participation in the delegate nomination and election process by virtue of its multiple reminders to Union members.").

In alleging animus on the part of the Election Officer, Mr. McGinnis forgets that many important decisions protecting the rights of political activists have been issued by virtue of protests filed by Mr. McGinnis and his political allies. For example, in In Re: McGinnis, 91 - Elec. App. - 43 (January 23, 1991), the Independent Administrator, over strenuous objections by certain employers, affirmed the Election Officer's decision to allow non-employees, such as Mr. McGinnis, to gain access to employer premises for purposes of campaigning. In other cases, even when a violation of the Election Rules was not found, the Election Officer took the additional step of having notices distributed at the Local's expense affirming the right of Local Union members to engage in political activities. See In Re: Lozanski, 91 - Elec. App. - 97 (SA) (March 15, 1991). Of course, whenever the Election Officer has found violations, he has taken swift and appropriate action. For example, in In Re: Golubovic, 91 - Elec. App. - 73 (SA) (February 19, 1991), the Election Officer, in order to redress an Election Rule's violation, ordered Local 710 to print 12,500 copies of campaign literature supplied by an opposition slate of candidates for posting on all Local Union bulletin boards. The extra copies were returned to the candidates for their own campaign use.


In addition, our files reflect that the Election Officer has issued 43 decisions involving Local 710 and Local 705 which were not appealed. See P-023-LU710-CHI (October 25, 1990); P-012-LU705-CHI (November 21, 1990); P-021-LU710-CHI and P-023-LU710-CHI (January 3, 1991); E-153-LU710-CHI (January 10, 1991); E-198-LU710-CHI (January 18, 1991); E-175-LU710-CHI (January 25, 1991); E-206-LU710-CHI (January 28, 1991); E-20-LU710-CHI and E-23-LU710-CHI (January 30, 1991); P-416-LU710-CHI and P-419-LU710-CHI (February 4, 1991); P-287-LU710-CHI (February 4, 1991); P-366-LU710-CHI (February 5, 1991); P-458-LU705-CHI (February 18, 1991); P-366-LU710-CHI (February 19, 1991); P-531-LU710-CHI (February 21, 1991); P-499-LU710-CHI (February 21, 1991); E-240-LU705-CHI (February 21, 1991); P-539-LU710-CHI (February 25, 1991); P-529-LU710-CHI, P-542-LU710-CHI, P-547-LU710-CHI, and P-548-LU710-CHI (February 26, 1991); P-595-LU710-CHI (March 1, 1991); P-514-LU705-CHI, P-524-LU705-CHI, P-568-LU705-CHI, P-580-LU705-CHI, and P-591-LU705-CHI (March 1, 1991); P-480-LU705-CHI (March 4, 1991); P-591-LU705-CHI (March 4, 1991); P-534-LU705-CHI (March 11, 1991); P-581-LU705-CHI (March 6, 1991); P-566-LU705-CHI (March 12, 1991); P-594-LU705-CHI (March 12, 1991); Post 37-LU170-ENG (March 12, 1991); P-626-LU705-CHI (March 14, 1991); P-525-LU705-CHI (March 15, 1991); P-622-LU705-CHI (March 15, 1991); P-649-LU705-CHI (March 19, 1991); P-600-LU705-CHI and P-609-LU705-CHI (March 27, 1991); P-701-LU705-CHI (April 16, 1991); P-600-LU705-CHI and P-609-LU705-CHI (April 23, 1991); P-340-LU705, 710-CHI (May 29, 1991); Post-41-LU701-CHI

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(Compliance) (July 17, 1991); P-600-LU705-CHI and P-609-LU705-CHI (Compliance) (July 22, 1991); P-824-LU710-CHI (July 29, 1991); P-515-LU705-CHI (July 30, 1991); P-863-LU705/710/743-CHI (August 16, 1991); P-890-LU710-CHI (September 26, 1991); P-873-LU710-CHI (Amended) (September 30, 1991); and P-910-LU710-CHI (October 23, 1991). In each of these decisions the Election Officer's uncompromising effort to investigate and resolve the issues in a fair manner is apparent.

With this record behind him, it is clear that the Election Officer has gone far to guarantee that the political rights of the members of Local 710 and 705 are protected.

Accordingly, the Election Officer's denial of Mr. McGinnis' protest is affirmed.



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

Dated: October 28, 1991