

OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
25 Louisiana Avenue, NW
Washington, DC 20001

Michael H. Holland
Election Officer

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October 22, 1991

VIA UPS OVERNIGHT

Anthony Veltry
88-41 62nd Drive
Rego Park, New York 11374

Dennis M. Silverman
President
IBT Local Union 810
10 East 15th Street
New York, New York 10003

Re: Election Office Case No. P-958-LU810-NYC

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Anthony Veltry, a member of Local Union 810. In his protest, Mr. Veltry contends that internal Union charges were filed against him by a Local 810 business agent and that he was found guilty of such charges and fined by the Local 810 Executive Board because of activities protected by the *Rules*. The protest was investigated by Regional Coordinator Amy Gladstein and Adjunct Regional Coordinator James Reif.

In August, 1991 Mr. Veltry prepared, duplicated and distributed a two page leaflet addressed to "Brothers and Sisters of Local 810." The masthead of the leaflet was entitled "Teamsters for Democracy" and contained in smaller print the Local 810's name and the International Union insignia. Business agent Louis Smith filed charges against Mr. Veltry for the preparation and publication of the newsletter contending that Mr. Veltry violated the International Constitution and the bylaws of Local 810 by utilizing, without authorization, the Local Union number and the International Union insignia. Mr. Smith also charged that Mr. Veltry distributed the document during working hours. The Executive Board of Local 810 found Mr. Veltry guilty of using the insignia of the International Union and the Local Union number on his literature without authorization by either the International or the Local and imposed a fine upon him of \$350.00. The Executive Board found that the charge that Mr. Veltry distributed the material during worktime were not proven.

Review of the leaflet clearly demonstrates that it is partisan political material, and not an official publication of either Local 810 or the International Union. As noted above, the masthead is entitled Teamsters for Democracy. The leaflet notes that the editor is Anthony Veltry of Local 810 Teamsters for Democracy and contains a Post Office Box

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and address which is other than that of the Local Union or the International Union. Contents of the leaflet also clearly establish that it is not a Local or International Union publication.

Article X, §1(b)(3) of the *Rules* prohibits the use of the Union's official stationery with the Union's name or insignia or other similarly identifying marks for campaign purposes. The leaflet here is not however printed on the Union's official stationery. The literature as a whole does not create the impression that it was sponsored or published by either the Local or the International Union. Under such circumstances the utilization of the Local Union number on campaign material would be permitted under the *Rules*. See Election Office Case No. P-409-LU693-PGH, affirmed in relevant part, 91-Elec. App.-72. Similarly, utilization of the International Union insignia on the campaign literature was not improper. See Election Office Case No. P-226-LU182-PGH, affirmed 91-Elec. App.-40 and Election Office Case No. P-542-LU420-CLA, affirmed 91-Elec. App.-87. See also October, 1991 issue of The International Teamster at page 28 wherein the R.V. Durham Unity Team utilizes the International Union insignia on its campaign material.

It is a violation of the *Rules* for internal Union charges to be brought or for internal Union discipline to be imposed for activity otherwise protected under the *Rules*. See Election Office Case No. P-352-LU769-SEC, affirmed 91-Elec. App.-76. Accordingly, both business agent Mr. Smith and Local Union 810 would violate the *Rules* by charging Mr. Veltry and imposing internal Union discipline on Mr. Veltry for the preparation and distribution of his August, 1991 leaflet assuming such preparation and distribution was activity otherwise protected under the *Rules*.

There is, however, in this case no evidence that the charges were brought or the internal Union discipline imposed upon Mr. Veltry because of activity protected under the *Rules*. The leaflet prepared and distributed by Mr. Veltry focused exclusively upon the Local Union officer elections in Local Union 810. Mr. Veltry is a candidate for Local Union office in that election. The leaflet focuses on the alleged deficiencies of the present Local Union leadership and the improprieties allegedly committed by them in relation to salaries, expenses and pensions. No candidates for International Union office are mentioned; the leaflet does not indicate support or opposition to any International Union officer candidates.

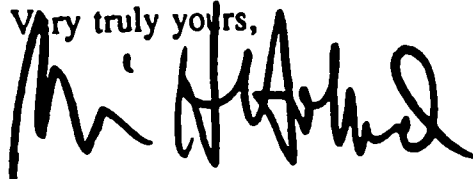
The jurisdiction of the Election Officer is limited under the March 14, 1989 Consent Order and the *Rules* to the three stage election process for International Union officers, i.e., the delegate election, the International Union Convention, and the International Union officer election. The Election Officer has no jurisdiction with respect to elections of IBT subordinate body officers, including Local Union officers and the *Rules* are not applicable, nor intended to apply, to such elections. See *Rules*, Preamble at pages 1-

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2. Since the charges brought against Mr. Veltry and the internal Union discipline imposed upon him were brought and imposed on the basis of a leaflet prepared and published by him concerning solely the Local Union officer election, the matter is beyond the jurisdiction of the Election Officer and the protest is dismissed on that basis.

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

Amy Gladstein, Regional Coordinator

IN RE:

ANTHONY VELTRY

and

IBT LOCAL UNION NO. 810

91 - Elec. App. - 215 (SA)

DECISION OF THE
INDEPENDENT ADMINISTRATOR

This matter arises as an appeal from the Election Officer's decision in Case No. P-958-LU810-NYC. A hearing was held before me by way of teleconference at which the following persons were heard: John Sullivan and Barbara Hillman for the Election Officer; Patrick Szymanski for Local Union 810; and Louis Nikolaidis for Anthony Veltry. In addition, Mr. Veltry appeared before me in person as did Sidney Meyers who also represented Local Union 810. The Election Officer provided a written summary in accordance with Article XI, Section 1.a.(7) of Rules for the IBT International Union Delegate and Officer Election ("Election Rules"). Mr. Szymanski also made a written submission on behalf of Local 810.

Anthony Veltry is a member of IBT Local 810 and he also belongs to the Teamsters for a Democratic Union. He has campaigned actively on behalf of the Ron Carey Slate of International Union officer candidates. In August and September of 1991, Mr. Veltry circulated a small two-page newsletter under the heading "Local 810

Teamsters for Democracy." The heading of the newsletter also bore the traditional horsehead-and-wheel Teamster's logo. Except for a brief reference in the August issue of Mr. Veltry's newsletter to the upcoming International officer elections, the newsletter was limited to Local 810 intra-Union politics and was generally critical of Local 810 leadership. After publication of the newsletter, a Local 810 business agent charged Mr. Veltry with violating the International Constitution and the Local's bylaws by using the Local Union designation "810" and IBT insignia on his newsletter without authorization. The Local's Executive Board held a hearing on the matter in September of 1991 and found Mr. Veltry guilty as charged. He was fined \$350.

Mr. Veltry then filed a protest with the Election Officer alleging that Local 810 had disciplined him in retaliation for his political activities in connection with the International officer elections. The Election Officer determined, however, that the issue raised was purely a matter of Local Union election politics. On that basis the Election Officer determined that he did not have jurisdiction under the Election Rules to resolve or remedy the protest. For the reasons discussed below, this matter is remanded to the Election Officer for further findings.

While it is true that the Election Officer has no authority to supervise intra-Local politics, that is not the issue that Mr. Veltry has raised here. When Mr. Veltry filed his protest with the Election Officer, he made the following allegations:

I am a member of the Teamsters for Democratic Union; I was a candidate for convention delegate; and I am a visible, vocal and active supporter for Ron Carey. Mr. Carey even addressed my fellow workers upon my invitation.

I believe the charges and fine is [sic] retaliation for my Union activities. Please intervene.

Mr. Veltry has clearly charged that his Local was reacting to his International Union campaign activity in imposing the fine for \$350. Mr. Veltry's accusation is simply not addressed by the finding that the Election Officer has no jurisdiction over Local Union activities. The Election officer must determine whether Mr. Veltry's claim is true. The issue raised by Mr. Veltry is squarely within the Election Officer's grant of jurisdiction under both the Election Rules and the Consent Decree.

It may be useful to note here that both this office and the Election Officer have employed a Wright Line mixed motive analysis in a long line of cases challenging employers who have taken disciplinary action against employees involved in protected activities. NLRB v. Wright Line, 251 NLRB 10182, 105 LRRM 1169 (1980), aff'd, 662 F.2d 899 (1st Cir. 1981), cert denied 455 U.S. 989 (1982). See In Re: Coleman, 90 - Elec. App. - 18 (SA) (December 14, 1990); In Re: Braxton, 91 - Elec. App. - 108 (SA) (March 26, 1991); In Re: Shrader, 91 - Elec. App. - 124 (SA) (April 12, 1991); In Re: Long, 91 - Elec. App. - 131 (SA) (April 23, 1991); In Re: Henderson, 91 - Elec. App. - 187 (SA) (September 18, 1991); In Re: Tuffs, 91 - Elec. App. - 191 (SA) (September 26, 1991); In Re: Serafinn, 91 - Elec. App. - 192 (SA) (September 26,

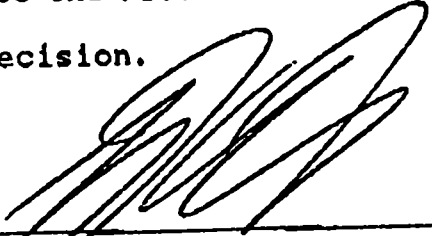
1991); In Re: Walker, 91 - Elec. App. - 204 (SA) (October 22, 1991).

Whether the Election Officer chooses to employ the Wright Line test, or another test, it is evident that some sort of analysis is needed to address the situation presented here, where a Local Union may be using its internal disciplinary procedures as a pretext to retaliate against a member for his International Union election activity. Absent such an analysis, the issue remains obscured. The introduction of Local Union election politics into any scenario could serve to improperly immunize the Local for retaliation that is actually directed at a member's involvement in International Union politics.

Since the motives in this case are perhaps even more blended than in cases involving employers, the Election Officer must take special care in pursuing his analysis. This case is particularly confusing because the Local may have had one proper motive (its desire to remedy the alleged wrongful use of the Union insignia) as well as two distinct improper motives. One of these improper motives -- retaliation for Mr. Veltry's involvement in Local politics -- falls outside of the Election Officer's jurisdiction. The other improper motive -- retaliation for Mr. Veltry's involvement in International Union politics -- falls squarely within the Election Officer's domain. The possibilities for disguising the Local's true motive with a pretextual motive are thereby multiplied. However, a finding that the Local was

retaliating against Mr. Veltry solely on the basis of his involvement in Local Union politics requires a distinct analysis and is not equal to finding that the Election Officer simply has no jurisdiction over the protest. The bottom line is that the Election Officer must decide whether the allegation made by Mr. Veltry in his October 8, 1991 protest -- that his involvement in the International Union election resulted in the Local's discipline of him -- is true.

Accordingly, this case is remanded to the Election Officer for further findings consistent with this decision.



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

Dated: November 5, 1991

IN RE:

STEVE RICHMOND

and

ROBERT HENRY

and

IBT LOCAL UNION NO. 1149

91 - Elec. App. - 218 (SA)

DECISION OF THE
INDEPENDENT ADMINISTRATOR

This matter arises as an appeal from the Election Officer's decision in Case No. P-992-LU1149-PGH. A hearing was held before me by way of teleconference at which the following persons were heard: John J. Sullivan and Barbara Hillman for the Election Officer; William Kane, a Regional Coordinator; John Axelrod for the R.V. Durham Unity Team; and Richard Gilbert for the Committee to Elect Ron Carey. In addition, the Election Officer provided 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 this protest, Steve Richmond, a member of IBT Local 1149 who supports R.V. Durham for IBT General President charges that a fellow member of his Local, Robert Henry, harrassed him because he supports Durham. Mr. Henry supports a rival candidate, Ron Carey,

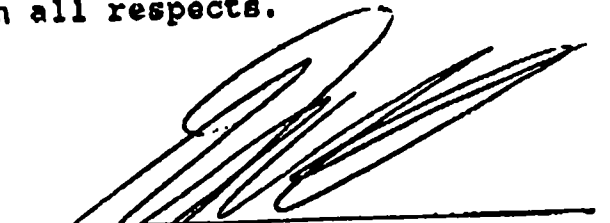
for IBT General President. Specifically, Mr. Richmond claims that he has been the subject of derogatory graffiti in the men's room at his place of employment and he has had his locker defaced as a result of his support for Durham.

The Election Officer investigated this matter in connection with another matter involving the removal of Durham campaign literature from an employee bulletin board. See Election Officer Case No. P-967-LU1149-PGH. Based on this inquiry, the Election Officer determined that there was insufficient evidence to determine identity of the individual or individuals responsible for the incidents concerning Mr. Richmond.

At the hearing before me nothing was presented to suggest that the Election Officer had reached an erroneous conclusion. Accordingly, I affirm the decision of the Election Officer in this matter.

However, I note that at the hearing before me, the additional matters of a posting of a derogatory letter on Mr. Richmond's locker as well as the institution of internal Union disciplinary proceedings by Mr. Henry against Mr. Richmond, were raised. The Election Officer has treated these issues as the subject matter of a new protest and has begun an investigation. These issues are therefore not properly before me on this appeal and are not included in the scope of this decision. I will consider them when and if they become the subject of an appropriate appeal.

For the foregoing reasons, the decision of the Election Officer in this case is affirmed in all respects.



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

Dated: November 5, 1991

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% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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Michael H. Holland
Election Officer

November 11, 1991

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% Cornfield and Feldman
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Chicago, IL 60604
(312) 922-2800

VIA UPS OVERNIGHT

Anthony Veltry
88-41 62 Drive
Rego Park, NY 11374

Dennis M. Silverman
President
IBT Local Union 810
10 E. 15th St.
New York, NY 10003

**Re: Election Office Case No. P-958-LU810-NYC, remanded
91 Elec. App. 215 - Decision on Remand**

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, Anthony Veltry, alleged that he was fined by Local Union 810 in retaliation for political activity protected by the *Rules*.

In August 1991, Mr. Veltry prepared, duplicated and distributed a two-page leaflet addressed to "Brothers and Sisters of Local 810." The leaflet was entitled "Teamsters for Democracy" and contained in smaller print the Local 810's name and the International Union insignia. Business agent Louis Smith filed charges against Mr. Veltry for the preparation and publication of the newsletter contending that Mr. Veltry violated the International Constitution and the bylaws of Local 810 by utilizing, without authorization, the Local Union number and the International Union insignia. Mr. Smith also charged that Mr. Veltry distributed the document during working hours. The Executive Board of Local 810 found Mr. Veltry guilty of using the insignia of the International Union and the Local Union number on his literature without authorization by either the International or the Local and imposed a fine upon him of \$350.00. The Executive Board found that the charge that Mr. Veltry distributed the material during worktime were not proven.

By letter dated October 22, 1991, the Election Officer originally denied Mr. Veltry's protest. The basis of that decision was the fact that the leaflet referred only to the Local Union officer election in Local 810, over which the Election Officer has no jurisdiction, and not to the 1991 IBT International Union officer election, over which the Election Officer has jurisdiction. Thus, the protest was denied even though the evidence supported the conclusion that Local 810 had the improper motive of penalizing Mr. Veltry for his intra-union Local 810 political activity.

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The Independent Administrator reversed this decision and remanded the case to the Election Officer for a determination as to whether another improper motive—i.e., Veltry's activities with respect to the 1991 IBT International Union officer election process and/or his support for the Ron Carey Slate—was also a cause for the retaliation. The decision requires the Election Officer to decide whether Veltry's "involvement in the International Union election resulted in the Local's discipline of him." 91-Elec. App.-215 (S.A.)(Slip op. at 6)(November 5, 1991).

The Election Officer has considered the issue as set forth by the Independent Administrator and has concluded that Mr. Veltry's campaign activities with respect to two of the three facets of the 1991 IBT International Union officer election, i.e., the delegate elections and the rank and file International Union officer election as well as his support for the Ron Carey Slate were at least part of the cause for the Local to charge and fine him. The basis of this conclusion is as follows.

Mr. Veltry is a politically active member of Local 810. He is employed by New York University Medical Center. During the delegate election process, Mr. Veltry and several other Local 810 members who were also employed at New York University Medical Center were nominated and formed a slate of candidates to run in opposition to a slate of candidate headed by the incumbent Local Union officers. Based on a protest filed by Steven Silverman, the Independent Administrator held that Mr. Veltry and other members of his slate were ineligible to seek delegate or alternate delegate positions.

Mr. Veltry, however, remains an active participant in the International Union election process, supporting General President candidate Ron Carey and the other members of the Ron Carey Partnership Slate. None of the Local Union officers of Local 810 share Mr. Veltry's political position with respect to the 1991 International Union officer election. Some members of the Local's executive board have publicly declared their support for the candidates on the Shea-Ligurotis Action Team.

Mr. Veltry and other members of the slate on which he attempted to seek a delegate position are presently seeking election to Local Union office in Local 810. Mr. Veltry himself is seeking the position of Secretary-Treasurer, running against the incumbent Secretary-Treasurer, Steven Silverman.

Further, there can be no proper motive for the Local's action. The leaflet which was printed here was not printed on the Union's stationery and does not, when read as a whole, create the impression that it was sponsored or published by either the Local or the International Union. Accordingly, the *Rules* would permit Mr. Veltry to use his Local's number. See Election Office Case No. P-409-LU693-PGH affirmed in relevant part, 91-Elec. App.-72. Similarly, the *Rules* permit use of the International Union

insignia on campaign literature. See Election Office Case No. P-226-LU182-PGH affirmed 91-Elec. App.-40 and Election Office Case No. P-542-LU420-CLA affirmed 91-Elec. App. 87. Apart from the *Rules*, as a matter of substantive law, use of the IBT's logo on campaign material cannot be prohibited. Donovan v. Teamsters Local 480, 120 LRRM 2347 (M.D. Tenn., 1985).

Moreover, Mr. Veltry's campaign activities have been and remain joint activities; he campaigns simultaneously for the Local Union office he seeks as well as on behalf of the Ron Carey Slate. The issues raised in both campaigns by Mr. Veltry are similar ones. Mr. Veltry's campaign for Local Union office reflects the positions being taken by General President candidate Ron Carey. Mr. Veltry urges his election for the Local Union office he seeks on the same basis that Ron Carey urges IBT members to vote for him for General President. Although the leaflet which formed the basis for the charges and fine against Mr. Veltry focused on the Local Union election in Local Union 810, the literature peripherally points to the International Union election in its first paragraph. Mr. Veltry distributes the literature when he is campaigning on behalf of Mr. Carey and his slate. See Election Office Case No. P-1003-LU810-NYC (November 4, 1991).

Mr. Veltry's election-related activities with respect to both the International Union officer election and the Local Union officer election are undifferentiated and simultaneously encompass both elections. The basis on which charges were brought against Mr. Veltry, the basis upon which the charges were upheld by Local 810 and the fine imposed were similarly undifferentiated.

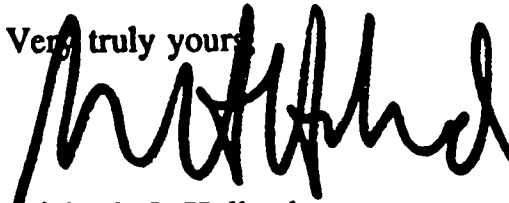
Accordingly, the protest is GRANTED. Within seven (7) days of the date of this decision Local 810 shall dismiss with prejudice the charges brought against Mr. Veltry by Local 810 business agent Louie Smith and shall dismiss with prejudice any presently pending charges against Mr. Veltry based on his utilization of the Local Union's number or the International Union logo on campaign literature—whether such literature relates to the 1991 IBT International Union officer election or the Local Union officer election in Local 810. Local 810 shall not entertain, but shall dismiss with prejudice any and all future charges brought against Mr. Veltry concerning his utilization of the Local Union's number and/or the International or Local's logo. Within seven (7) days from the date of this decision, Local Union 810 shall reimburse whatever pay Mr. Veltry, the amount of fines heretofore collected by Local 810 from Mr. Veltry based on Mr. Smith's charges against him or imposed by the Local for any similar charges. Within nine (9) days of the date of this decision, Local 810 shall file an affidavit with the Election Officer demonstrating its compliance with the terms of this decision.

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

Anthony Veltry
November 11, 1991
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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
Amy Gladstein, Regional Coordinator