



OFFICE OF THE ELECTION OFFICER
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January 14, 1992

**VIA UPS OVERNIGHT AND FACSIMILE
AND (WHERE NOTED) BY HAND DELIVERY**

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Re: Election Office Case No. Post76-IBT

Gentlemen

A protest was filed pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules") by Edward Brereton, President of Teamsters Joint Council 64, based upon allegations contained in internal Union charges case filed with him as the Joint Council 64 President by Jack Powers, Secretary-Treasurer of Joint Council 64 and Local 1150¹ The allegations of

¹ By letter dated December 27, 1991, Mr Brereton forwarded to the Election Officer internal Union charges filed by Jack Powers against Robert Dubian, Secretary-Treasurer of Local 559 and Tom Gilmartin, a successful candidate for International Union Vice President from the Eastern Conference on the Ron Carey Slate and President

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the internal Union charges state that Robert Dubian, Secretary-Treasurer of Local 559 and a supporter of the Ron Carey Slate, and Tom Gilmartin, a successful candidate for International Vice President from the Eastern Conference on the Ron Carey Slate and President of Local 559, campaigned on Union time, utilized Union funds and resources for campaigning purposes and misrepresented themselves to IBT members as members of Local 1150 while campaigning. Messrs Gilmartin and Dubian through their counsel, Susan Davis, contend that the charges are without merit, that the protest is not timely and that the filing of the internal Union charges is retaliation for their campaign activities. An investigation of this protest was conducted by the Washington, D C office of the Election Officer.

Initially, the Election Officer will address the issue of timeliness raised by counsel for Messrs Gilmartin and Dubian. Ms Davis contends that the allegations contained in the internal Union charges, and thus the protest, all arose during the 1991 IBT International Union officer campaign and were known to Mr Powers by November 15, 1991, if not prior thereto. Since the charges were not filed until December 10, 1991 --the actual election date--and not forwarded to the Election Officer as a protest until December 27, 1991, Ms Davis argues that both the charges and the protest are untimely under Article XI of the *Rules* and should be dismissed.

Many of the events cited in the internal Union charge did, in fact, occur long before the date either the charges were filed or the date Mr Brereton forwarded the internal Union charges to the Election Officer. However, Mr Brereton forwarded this matter to the Election Officer because of the inability of the Joint Council to hear such charges until the Election Officer ruled on the merits of the alleged improper campaign activities under the *Rules*. In Re Viramontes, 91-Elec App -229, modifying Election Office Case No P-1021-LU439-CCV. For this reason, and given the fundamental importance of proper campaign funding under the March 14, 1989 Consent Order and the *Rules*, the Election Officer declines to determine this protest on the basis of timeliness. See In Re Gully, Election Office Case No P-249-LU283-MGN, affirmed 91-Elec App 158.

Mr Powers submitted to the Election Officer a statement, documentary evidence and names of witnesses detailing dates, places and times of campaigning by Mr Dubian and/or Mr Gilmartin during the period August 1, 1991 through November 13, 1991, alleging that this campaigning either took place while Messrs Gilmartin and Dubian were on Union paid work time and/or with the use of Union funds, specifically the use of Local Union cars and Union purchased gasoline. Mr Powers premises his conclusion

of Local 559. By a letter dated December 30, 1991, the Election Officer advised Mr Brereton and all concerned parties that the communication forwarded to the Election Officer by Mr Brereton would be considered a post-election protest.

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that Messrs Dubian and Gilmartin were campaigning on Local Union time from a statement purportedly made to him by Mr Gilmartin on October 29, 1991. Mr Gilmartin allegedly told Mr Powers that most of his campaigning was incidental, that he only used vacation time when he joined Ron Carey for a campaign plant visit.

In addition, Mr Powers states that Messrs Gilmartin and Dubian always used their Union cars to travel to campaigning sites. Other IBT Local Union officer officers confirmed that Messrs Gilmartin and Dubian also drove to their Locals in Union vehicles when they campaigned among their Locals' members.

Messrs Gilmartin and Dubian have submitted their campaign records as well as the related financial records of Local Union 559. The records document their campaign activity and their work time (including use of vacation) and reimbursed expenses from Local 559 for the 1991 IBT International Union officer election campaign period. Messrs Gilmartin and Dubian have also provided additional documents and information as requested by the Election Officer. The Election Officer has carefully examined all campaign and Local Union records and reviewed Messrs Gilmartin's and Dubian's utilization of work time, paid for by Local 559, and their use of other Union resources during the time used by each of them for campaigning. For the reasons as set forth below, the Election Officer concludes that no violation of the *Rules* has occurred.

There is no dispute regarding the use by Mr Gilmartin and/or Mr Dubian of Union owned automobiles for campaign purposes, i.e., traveling to and from the sites at which they campaigned. They both agree that they used the Union owned vehicles to travel to campaign sites. Pursuant to the by-laws of Local 559, Local Union officers and business agents to whom the executive board assigns a Union car, have use of that car for personal as well as Union business. As the Local's by-laws indicate, the right to use the Union's car for personal purposes is part of the officer's or business agent's compensation. The value of such use is reported by the Local Union to the Internal Revenue Service as additional income upon which income taxes are paid.

The Local Union follows the same practice with regard to the payment for gasoline used to operate these vehicles. All gasoline costs are paid by the Local. A portion of such costs, commensurate with the portion of the automobile usage assigned as additional compensation, is also considered part of the officer's or business agent's compensation and reported by the Local Union as income of the relevant office or business agent for tax purposes.

Whether use of a Union owned automobile for the purpose of campaigning violates the *Rules* has been addressed by the Independent Administrator in his decision in Re Gregory/Spurgeon and IBT Local Union 135, 91-Elec App-135 (SA), (April 29, 1991). The Independent Administrator in that case, affirming a ruling of the Election

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Officer, stated that use of Union cars is not a violation of the *Rules*, " given that the Local Union cars are used by the business agents for personal reasons, it not a violation of the *Election Rules* for a business agent to use his car to travel to a worksite to campaign " *Id* at p 4

The same reasoning is applicable to utilization of gasoline paid for by the Local Union. Since Local Union officers and business agents are permitted to utilize gasoline paid for by the Local Union for personal reasons, and since the costs associated with such usage are reported for tax purposes as part of that officer's or business agent's compensation, it is not a violation of the *Rules* for a Local Union officer or business agent to use such gasoline to travel to a campaign site.

Further, however, evidence submitted to the Election Officer demonstrates that Mr. Dubian in fact personally paid the gasoline costs incurred as a result of his and Gilmartin's campaign activities. To avoid any appearance of impropriety or possibility that Local Union funds would be utilized for campaign purposes, Mr. Dubian for all of calendar year 1991 deferred--did not receive--a portion of his Local Union salary. For each week during 1991, Mr. Dubian deferred \$150.00 of his salary as an advance payment for campaign expenditures which might be made by him or Mr. Gilmartin but charged to Local Union 559 by reason of his or Mr. Gilmartin's use of the Local's gasoline credit card or otherwise. The reconciliation of campaign reports and Local Union financial records demonstrates that the total value of the gasoline utilized by Messrs. Gilmartin and Dubian for campaign purposes was \$339.91. The amount of income deferred by Mr. Dubian far exceeds such amount, the amount of his deferment was always in excess of the campaign expenses accrued by him and/or Mr. Gilmartin. In effect, Mr. Dubian paid the Local in advance for the campaign expenditures made thereafter by both him and Mr. Gilmartin.

In accordance with the foregoing, the Election Officer finds that Mr. Dubian's and/or Mr. Gilmartin's use of the Union's automobiles and/or gasoline credit cards for campaign purposes do not violate the *Rules*.

Mr. Powers and Robert Benedetto of Local 145 also allege campaigning by either Mr. Gilmartin or Mr. Dubian or both while on Union paid work time. Article VIII, § 10(b) of the *Rules* prohibits any Union officer or employee from campaigning on Union paid work time. However, that same section provides that campaigning during paid vacation, paid lunch hours or breaks or similar paid time off is not violative of the *Rules*. The Election Officer has reviewed and investigated each specific allegation of campaigning by Messrs. Gilmartin and Dubian during Union paid work time. Additionally, the Election Officer has reviewed the totality of Messrs. Gilmartin's and Dubian's campaign schedule and the related Local Union financial records for all dates.

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when campaigning occurred. As more fully described below, the Election Officer concludes that the *Rules* have not been violated.

August 1, 1991

Mr Powers stated that on August 1, 1991, Mr Dubian, during business hours, appeared at the Stratford, Connecticut Sikorsky plant and campaigned outside that Sikorsky facility for approximately one hour. Mr Dubian has no record of campaigning outside the Sikorsky plant on August 1, 1991, but his records indicate he campaigned at that location for approximately one hour on July 31, 1991. On that date, Mr Dubian took one half-day of his vacation time to cover his campaign activities. Mr Powers does not allege any other campaigning by Mr Dubian at this plant on or about the July 31 or August 1, 1991 dates, the circumstances and events surrounding Mr Dubian's activities on this campaign visit as related by both Mr Dubian and Mr Powers are identical. The Election Officer finds that regardless of whether the incident occurred on July 31 or August 1, 1991, Mr Dubian was on vacation time--having utilized one-half vacation day to campaign at Sikorsky on or about August 1, 1991.

August 29, 1991

Robert Benedetto, President of Local 145, stated that on August 29, 1991, Robert Dubian met with him in his office, the purpose of the meeting was campaign related. Mr Benedetto also stated that he had heard but had no direct knowledge that Mr Dubian on that same date also went to Dresser Industries, an employer of IBT members, and campaigned at or near that location. Mr Benedetto states that he had only the one meeting in his office with Mr Dubian concerning the campaign.

Mr Dubian also admits to having a meeting on campaign related issues with Mr Benedetto and after that meeting campaigning at Dresser Industries. Mr Dubian contends that meeting occurred on August 23, 1991, not August 29, 1991. Records supplied by Mr Dubian and the Local indicate that Mr Dubian took a vacation day on the date his campaign records reflect he met with Mr Benedetto. Again, regardless of the date of the meeting, only one meeting occurred and Mr Dubian was on vacation the date of the meeting.

October 29, 1991

Mr Powers contends that Messrs Gilmartin and Dubian campaigned on October 29, 1991 at the Sikorsky plant in Stratford, Connecticut between the hours of 2:30 p.m. until approximately 4:30 p.m., regular business hours of the Local Union. The records submitted by the Local and the campaign records of Messrs Gilmartin and Dubian show that both Mr Dubian and Mr Gilmartin took and were charged one-half day of vacation.

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time on this date. The half-day was taken in the afternoon of October 29, 1991 for the purpose of campaigning at the Sikorsky plant.

November 7, 1991

Mr Powers also alleges that on November 7, 1991, during some period between the hours of 2 30 p m and 4 00 p m , Mr Dubian was at the Westhaven, Connecticut facility of Sikorsky to engage in campaign activities. The evidence demonstrates that Mr Dubian remained at this facility for no more the time it took to pass out three leaflets to IBT members employed there. He was then asked to leave by security employees of the company and did so.

Mr Dubian does not recall being at this Sikorsky facility on November 7, 1991. However, he agrees that he did appear at this facility on one occasion, remained there for a very short period of time, was asked to leave the premises by security guards and did so. Mr Dubian contends that his appearance on this occasion--whatever the date --for these few minutes at the Westhaven Sikorsky facility was incidental to his regular Union business.

Mr Dubian, as Secretary-Treasurer of Local Union 559, is a trustee of a health benefit plan whose headquarters are in Milford, Connecticut. Mr Dubian also has responsibilities on behalf of Local 559 which require him to travel to Bridgeport and Greenwich, Connecticut from time to time. Traveling from Local 559's offices to or from Milford, Bridgeport or Greenwich requires that Mr Dubian pass the Westhaven Sikorsky facility. His few minutes of campaign activity at that facility was an unscheduled stop as he was traveling to or from either Milford, Bridgeport or Greenwich in connection with his regular Union business.

Article VIII, § 10(b) provides that campaigning incidental to regular Union business does not violate the prohibitions against Union financing of campaign activities. The Election Officer concludes that Mr Dubian's visit to the Westhaven Sikorsky facility was, in fact, incidental to his regular Union activities and therefore did not violate the *Rules*, even if accomplished on Union paid work time.

November 12, 1991

Mr Powers states that Messrs Gilmartin and Dubian were both campaigning on November 12, 1991 at the Sikorsky plant in Stratford from 2 30 p m until 4 05 p m , i e , during normal Union business hours. The campaign log and Local Union records reviewed by the Election Officer show that by Messrs Gilmartin and Dubian each had taken a one-half day vacation on this date. Accordingly, there is no violation of the *Rules*.

November 13, 1991

Mr Powers alleges that at approximately 4 15 p m on November 13, 1991, Mr Dubian was campaigning again at the Stratford facility of Sikorsky while on Union time. The evidence submitted by Mr Powers is an internal Sikorsky security report which states that an unnamed person who said he was from Local 559 asked the security guard where he could hand out leaflets and was told that he could not do so. The person then left the property. There is no other evidence of Mr Dubian being at Sikorsky on November 13, 1991 and he denies being there on that date. In any event, the evidence does not indicate that any campaigning occurred on that date or that, if any Union time was used, it was other than incidental.

Mr Gilmartin and/or Mr Dubian were also at the Sikorsky facility in Stratford on other dates, including, at least, October 24 and November 5, 1991. However, on those dates their campaign activities were confined to times outside normal Union business hours, they were campaigning either at or after 11 00 p m on October 24, 1991 and at or before 7 30 a m on November 5, 1991. Campaigning by a Local Union officer or employee on such officer's or employee's own time--that is, outside of his normal work hours--does not violate the *Rules*. See, e g , Election Office Case No Post75-IBT.

Based on the evidence as detailed above, the Election Officer does not find any violation of those provisions of the *Rules* prohibiting use of Union time or Union resources for the purpose of campaigning on the part of either Mr Gilmartin or Mr Dubian. As provided in the *Rules*, Messrs Gilmartin and Dubian utilized vacation or other non-work time for the purpose of campaigning. In the one or two instances where vacation or other non-work time was not used, the Election Officer finds that the campaign activities were incidental to normal Union business and thus not violative of the *Rules*.

As noted above, the Election Officer has reviewed all of Messrs Gilmartin's and Dubian's campaign records as well as the related financial records of Local Union 559, even for dates when no specific allegation of improper campaigning was made. The records demonstrate that both Messrs Gilmartin and Dubian used vacation time when they engaged in campaign activities. The records reflect that neither of them used Union paid work time to engage in campaign activity. The evidence does not indicate any improper use of Union paid work time or Union resources for the purposes of campaigning.

Mr Powers' final allegation is that Messrs Gilmartin and Dubian misrepresented themselves as members of Local 1150 while they engaged in campaign activities at the Stratford, Connecticut Sikorsky facility. Mr Powers claims that both Mr Dubian and

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Mr Gilmartin wore a sign around their neck which said, "Teamsters 1150," Mr Powers contends that their wearing such a sign was meant to mislead the IBT members employed by Sikorsky into believing that Messrs Gilmartin and Dubian represented Local 1150

The Stratford facility of Sikorsky is not a Union shop, that is, many of the employees, albeit in the bargaining unit represented by Local 1150, are not themselves members of the IBT Both Messrs Gilmartin and Dubian admit that they wore a sign saying, "Teamsters 1150"--contending that the sign was worn mainly by Mr Dubian--but only for the purpose of attracting the attention of those Sikorsky employees who were IBT members, the only Sikorsky employees eligible to participate in the 1991 IBT International Union officer election During all times that they wore such signs, Messrs Gilmartin and Dubian were simultaneously handing out literature urging IBT members to vote for Ron Carey, Mr Gilmartin and the other candidates on the Ron Carey Slate Neither Mr Dubian nor Gilmartin did or said anything further suggesting that they were members of Local 1150, indeed, when asked they readily admitted to being members of a different IBT Local Union

Under these circumstances, as set forth above, the Election Officer does not find that there was any attempt by either Mr Dubian or Mr Gilmartin to deliberately misrepresent themselves as members of Local 1150 or as speaking on behalf of Local 1150 The sign was used to direct the attention of the members of Local 1150, so that such members could receive the campaign literature being distributed by Messrs Gilmartin and Dubian Neither ever stated that they were members of Local 1150 nor denied that they were members of a different Local Union There was no violation of the *Rules*

In accordance with the foregoing, this post-election protest is DENIED The Election Officer has found that there has been no violation of the *Rules* and thus, no basis for a post-election protest *Rules*, Article XI, § 1(b)(2)² Assuming a timely appeal, the certification of Mr Gilmartin's election will be stayed pending the Independent Administrator's decision *Rules*, Article X, § 1(b)(6) Upon receipt of the Independent Administrator's decision--should he affirm this decision and not stay its effectiveness--the Election Officer will promptly certify the election results *Rules*,

² Even assuming that the Election Officer had found that the *Rules* had been violated, such violation would not have affected the results of the election Mr Gilmartin was a winning candidate for International Union Vice President from the Eastern Conference, receiving 58,654 votes The losing candidate for such International Union Officer position with the highest number of votes, Frank Carracino, seeking election as a member of the Shea-Liguorotis Action Team, received 39,180 votes The dollar amount of the resources allegedly improperly utilized by Mr Gilmartin, or by Mr Dubian on his behalf, does not equate to a vote margin of almost 20,000 votes

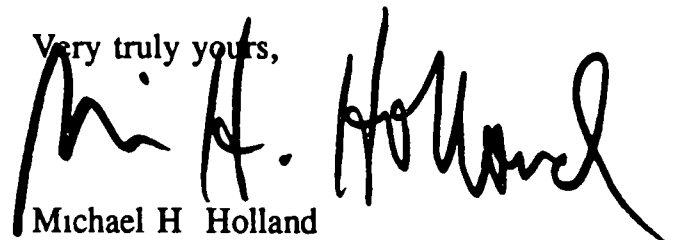
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Article II, § 1(b)(8) In this, and all other possible situation, the Election Officer will, as always, abide by the directives of the Independent Administrator

Further, the Election Officer notes that the internal Union charges which formed the basis of this post-election protest contain no allegations other than the election-related conduct described above, which the Election Officer has determined did not violate the *Rules*. The Election Officer has exclusive jurisdiction to determine those issues, the only ones raised in the internal Union charges. Since the *Rules* were not violated by either Messrs Gilmartin or Dubian on the basis of any allegation set forth in the internal Union charges, the Election Officer directs that Joint Council 64 dismiss such charges with prejudice. See *In Re Viramontes, supra*. Within 10 days of the date of this decision or if this decision is timely appealed, or within 10 days of the decision of the Independent Administrator, and if he affirms in relevant respects this decision, Joint Council 64 shall submit an affidavit to the Election Officer demonstrating that the internal Union charges heretofore filed with it by Jack Powers have been dismissed with prejudice.

If any interested party is not satisfied with this determination, they may request a hearing before the Independent Administrator within seventy-two (72) 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

Elizabeth A Rodgers, Regional Coordinator

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Ron Carey Slate
c/o Richard Gilberg, Esquire

R V Durham Unity Team
c/o Hugh J Beins, Esquire

Walter Shea
c/o Robert Baptiste, Esquire