



OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
25 Louisiana Avenue, NW
Washington, DC 20001
(202) 624 8778
1 800 828 6496
Fax (202) 624 8792

Michael H Holland
Election Officer

October 23, 1990

Chicago Office
% Cornfield and Feldman
343 South Dearborn Street
Chicago, IL 60604
(312) 922 2800

VIA UPS OVERNIGHT

Vincent P. Miller
235 Victory Road
Dorchester, MA 02122

Paul V. Walsh
Secretary-Treasurer
IBT Local Union 379
222 Forbes Road
Room 102
Braintree, MA 02184

Re: Election Officer Case No. P-017-LU379-ENG

Gentlemen:

A pre-election protest was filed pursuant to Article XI of the Rules for the IBT International Union Delegate and Officer Election, revised August 1, 1990 ("Election Rules"). In his protest the complainant alleges that he was wrongfully suspended from membership in Local Union 379. As a result of his suspension from membership the complainant was ruled not eligible to run for the office of delegate to the 1991 IBT International Convention by the Election Officer on October 3, 1990. For the reasons set forth below, the complainants protest is denied.

The Election Officer's investigation revealed the following facts. On February 12, 1990 the complainant was charged with violation of Article XIX, Sections 6(b)(3) and 8 of the Teamsters Constitution for allegedly failing to return previously provided mailing lists to the Local Union. On February 28, 1990 the Local Union Executive Board held a hearing and found the complainant guilty of the charges and imposed a one year suspension and a \$1,000.00 fine on the complainant. The Complainant appealed the findings and penalty of the Local Union to Joint Council 10; that appeal was denied because of the complainant's failure to pay the fine pending his appeal.

The complainant argues that it was unfair to require him to pay the fine in order to appeal the judgment of the Local Union. However, Article XIX, Section 9(a) of the Teamsters Constitution provides that the General President may waive payment of a fine pending appeal. The complainant did not request such waiver from

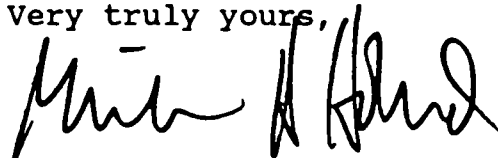
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the General President. Moreover, the complainant did not attempt to appeal the Joint Council's denial of his appeal to the General Executive Board.

Because he failed to properly appeal the judgement of the Local Union that judgement is binding on the complainant. Because the complainant has been suspended from membership he not eligible to run for the position of delegate during the term of his suspension.

If any interested party is not satisfied with this determination they may request a hearing before the Administrator within twenty-four (24) hours of their receipt of this letter. Such request shall be made in writing and shall be served on Administrator Frederick B Lacey at LeBoeuf, Lamb, Leiby & MacRae, One Gateway Center, Newark, N.J. 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

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

IN RE: : 90 - Elec. App. - 5
: :
VINCENT P. MILLER :
and :
LOCAL UNION 379 : DECISION OF
: THE INDEPENDENT
: ADMINISTRATOR

I. Introduction

This matter arises out of a pre-election protest under Article VI, §1 of the Rules For The IBT International Union Delegate And Officer Election ("Rules"). As set forth in the Election Officer Summary ("Summary"):

At issue is the eligibility of the complainant, Vincent P. Miller, to run for delegate to the 1991 IBT International Convention. On October 3, 1990, the Election Officer ruled that Mr. Miller was not eligible to run for delegate because he was suspended from membership in Local Union 379, for a period of one year, effective March 1, 1990. In his protest, filed pursuant to Article IX of the Rules, Mr. Miller challenges his suspension.
Summary, p.1.

The Summary further states (p.2):

Contentions of the Parties

Mr. Miller alleges that he was wrongfully suspended from membership in Local Union 379 because he was not guilty of the offense charged, i.e., violations of Article XIX, §6(b)(3) and §8 of the IBT Constitution arising from the alleged misuse and failure to return a previously provided mailing list to the Local Union. Mr. Miller also challenges the fairness of IBT Joint Council 10's denial of his appeal because of his failure to pay his \$1,000 fine pending appeal.

The Local Union argues that Mr. Miller was suspended from membership upon proper evidence and after due process. The Local Union charges that Mr. Miller is trying to make an "end run" around the Local Union by

seeking a ruling by the Election Officer reversing the Local Union's decision.

The Election Officer's investigation in this matter is set forth in his Summary as follows (pp.2-3):

Nature of Investigation

In processing Mr. Miller's request for eligibility verification, it was determined that Mr. Miller was suspended from membership in Local Union 379 effective March 1, 1990. Additional investigation revealed that charges filed against Mr. Miller by a fellow member of the Local Union, the facts underlying the charge, the proceedings at the Local Union level, and the penalty imposed. Also considered were Mr. Miller's appeal to the IBT Joint Council and the dismissal of that appeal because of his failure to pay the fine imposed by the Local Union. Finally, inquiries were made to the Office of the General President of the IBT to determine whether Mr. Miller sought a waiver of the fine pending appeal.

As a result of this investigation, the Election Officer made the following Findings of Fact (Summary, p.3):

Findings of Fact

None of the facts relevant to this protest are in dispute.

1) Vincent P. Miller was a member in good standing of Local Union 379 until March 1, 1990.

2) On February 12, 1990, Mr. Miller was charged with violation of Article XIX, §6(b)(3) (embezzlement or conversion of union property) and §8 (refusal to return Local Union records) of the IBT Constitution.

3) The charges were based upon the allegations that Mr. Miller refused to return membership mailing lists that were provided to him by the Local Union and that the mailing labels were improperly used.

4) On February 28, 1990, the Local Union Executive Board held a hearing, found Miller guilty of the offenses charged, and imposed a one-year suspension and a \$1,000 fine.

5) Mr. Miller appealed the judgment of the Local Union to IBT Joint Council 10. His appeal was denied because of his failure to pay the fine pending appeal as required by Article XIX, §9(a) of the IBT Constitution.

6) Article XIX, §9(a) of the IBT Constitution also provides that the General President may waive payment of a fine pending appeal.

7) Mr. Miller did not seek a waiver from the General President of the payment of his fine, nor has he further appealed the judgment of his Local Union to the IBT General Executive Board.

Based upon the foregoing, the Election Officer drew the following conclusions which are set forth in his Summary as follows (pp.3-4):

Conclusions of Law

Article VI, §1(a)(1) of the Rules provide that to be eligible to run for delegate, an individual must be a member in good standing for a period of twenty-four (24) consecutive months prior to the month of nomination. Membership in good standing can be interrupted by, inter alia, a suspension from membership. Because a suspension from membership can affect an individual's eligibility to run for the position of delegate, alternate delegate, or International Officer, and because the Election Officer has the responsibility to rule on matters affecting such eligibility, the Election Officer has the discretion to inquire into the appropriateness of a suspension in the appropriate case and to the extent that such suspension affects eligibility. Further inquiry by the Election Officer may be appropriate where a member is appealing a suspension or where futility or impossibility of further appeal is demonstrated. In the instant case, Mr. Miller had the opportunity to appeal the judgment of his Local Union and the right to request a waiver of the payment of his fine pending such appeal to the General President. Mr. Miller did not seek such a waiver and, therefore, did not exhaust his available internal remedies.

The Election Officer's determination is set forth in his Summary as follows (p.4):

The Election Officer's Determination

The Election Officer denied the protest because he found, on the undisputed facts of this case, that Mr. Miller was suspended from membership and failed to exhaust his internal union remedies to challenge that suspension. The Election Officer also found that there was no demonstrated justification for Mr. Miller's failure to exhaust these remedies.

II. The Hearing

The hearing before me took place on October 30, 1990, by means of telephone conference. Heard was Ronald Webne on behalf of the Election Officer. Paul V. Walsh, the Secretary-Treasurer of Local Union 379, submitted a letter setting forth the position of Local Union 379, but was not heard.

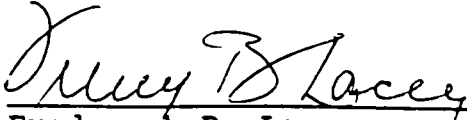
We also did not hear from Mr. Miller, notwithstanding my letter to him of October 26, 1990, noticing the hearing. Further, I am advised by the Election Officer that he attempted to reach Mr. Miller, but was unable to do so because Mr. Miller did not furnish a telephone number to either the Election Officer or to me.

III. Conclusion

I find that the Election Officer's Finding of Facts have been established to my satisfaction and that his Conclusions of Law are adequately supported by the facts and valid as a matter of law.

Accordingly, the Election Officer's determination is upheld. As noted, Mr. Miller did not appear. However, if Mr. Miller can demonstrate that he did not receive my letter of October 26, 1990,

I will permit him, not later than November 5, 1990, to telephone me, or in my absence, Mr. Stuart Alderoty, or Mr. Robert Bhend, both of my office, to set forth his version of the facts.



Frederick B. Lacey
Independent Administrator

Dated: October 31, 1990