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November 18, 1991

VIA UPS OVERNIGHT

Charles Leo Deaner
3661 Brisborn St.
Harrisburg, PA 17111

Thomas B. Griffith, President
D. H. Crum, Secretary-Treasurer
and the Executive Board
IBT Local Union 776
2552 Jefferson St.
Harrisburg, PA 17111

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

Re: Election Office Case No. P-1008-LU776-PHL

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Charles Leo Deaner, a member of and business agent for Harrisburg, Pennsylvania Local Union 776. Mr. Deaner alleges that Local Union 776 and its officers have engaged in various retaliatory actions against him because of his support for General President candidate R. V. Durham and the members of the R. V. Durham Unity Team.

These retaliatory actions allegedly occurred in August, September, and October, 1991; the most recent event occurred on October 13, 1991. Mr. Deaner's protest was filed on October 22, 1991, far in excess of the 48-hour time limit for filing protests under the Rules (Article VII, § 1(a)(1)). In view of the nature of the protest, particularly the allegation that Mr. Deaner was threatened, the Election Officer has decided to investigate and to consider the merits of Mr. Deaner's protest.

Mr. Deaner's protest alleges that Local 776 and its officers violated the rules in the following ways:

Charles Leo Deaner
November 18, 1991
Page 2

1. Local 776 required Mr. Deaner retroactively to reimburse the Local for valet-laundry expenses allegedly in retaliation for his support of R. V. Durham and the R. V. Durham Unity Team.

2. Local 776 officers threatened and harassed Deaner because of his support for Mr. Durham and Mr. Durham's slate.

3. At the September 8, 1991, regular membership meeting, Local 776's officers engaged in improper campaign activities opposing Mr. Durham and endorsing Ron Carey for IBT General President and John Morris for International Vice President for the Eastern Conference.

The protest was investigated by Regional Coordinator Peter Marks. Each of Mr. Deaner's allegations will be dealt with in separate sections below.

I. Reimbursement for Valet Expenses

Mr. Deaner claims that historically he has included valet expenses (such as laundry, cleaning, and pressing) during out-of-town trips in his expense reports to Local 776. Shortly after the IBT International Union Convention in Orlando, at which Deaner, a delegate from Local 776, announced his support for R. V. Durham, Dale Crum, Local 776's Secretary-Treasurer, told him that Local 776's Executive Board had decided that these expenses would no longer be permitted.¹ Deaner said that he could "live with this decision" and would no longer charge valet expenses.

In August and September, Deaner actively campaigned on behalf of R. V. Durham, including accompanying Mr. Durham to Local 776 worksites on August 14th and 15th. On September 16, 1991, Secretary-Treasurer Crum informed Deaner for the first time that the no-valet expense policy was retroactive to January 1991 and demanded that Deaner reimburse Local 776 \$82.45 for valet expenses previously charged. Deaner complied with this request under protest.

Local 776 does not have a written expense policy; the custom and practice has been to use a "rule of reason." It is undisputed that Local 776 accepted Deaner's valet expense charges prior to the 1991 IBT International Union Convention. It is also clear that the retroactive application of this new policy was an afterthought, coming several

¹ Local 776's decision may have been prompted by letters and determinations of the Election Officer finding that under the *Rules* and the Advisory Regarding Convention Expenses, issued April 19, 1991 ("Advisory"), Locals were not obligated--absent exigent circumstances--to reimburse delegates and alternate delegates for laundry and cleaning costs.

months after the new policy was announced. It is also undisputed that Deaner is the only Local 776 official who publicly supports R. V. Durham. The Election Officer has also considered the hostility of Local 776's officers toward Mr. Deaner because of his campaign activities, as will be outlined below.

The Election Officer concludes that the retroactive application of Local 776's new policy disallowing valet expenses and demanding reimbursement from Mr. Deaner was motivated by an intent to retaliate against him for his political activities in violation of the *Rules*. Local 776 is ordered to return to Mr. Deaner, within five (5) days of the date of this letter, the \$82.45 which he paid under protest. Local 776 shall simultaneously file an affidavit with the Election Officer demonstrating that the money has been returned.

II. Threats and Harassment

Mr. Deaner accompanied R. V. Durham to several worksites on August 14th and 15th. They were followed by several officials of Local 776 who engaged them in discussions at various locations and who passed out anti-Durham literature. There is no evidence that the substance of any of these anti-Durham activities was other than robust campaigning by individuals with opposing views. Mr. Deaner asserts that the mere act of following him and Mr. Durham was somehow improper, but nothing in the *Rules* prohibits members with opposing views from confronting one another.

At Local 776's regular monthly meeting held on September 8, 1991, there was some criticism of positions taken by R. V. Durham at the IBT Convention. Mr. Deaner responded in support of Durham but was forced to leave the stage where he had been seated. He claims that this reseating had never been ordered before. It is clear that Deaner was given a full opportunity to state his views, albeit from the floor rather than from the stage.

On September 30, 1991, Mr. Deaner and Local 776 Recording Secretary Carlos Ramos had an argument in Deaner's office about the decision of Local 776 to cease distributing gifts to its members. Deaner had earlier suggested to some of Ramos's fellow workers that they confront Ramos directly about this. Ramos was angry at Deaner for suggesting this confrontation. Loud words were exchanged. Ramos said he would ruin Deaner politically. Local 776 President Thomas Griffith came out of his office and told Ramos and Deaner to take their dispute outside and settle it elsewhere; it appears that this type of comment has frequently been made by President Griffith in response to personal or political arguments between the Local's members, including its officers and business agents. Nothing in this incident was directly related to the ongoing IBT election campaign.

Charles Leo Deaner
November 18, 1991
Page 4

On November 3, 1991, Mr. Deaner found an offensive leaflet on his desk, having to do with AIDS and using some off-color language. The leaflet had nothing to do with the ongoing IBT election and did not refer to Mr. Deaner. Mr. Deaner does not know who placed the leaflet on his desk. The Election Officer investigation was unable to determine by whom or where the leaflet was prepared or copied or who placed it on Mr. Deaner's desk.

While the incidents outlined above may have caused Mr. Deaner some consternation, the Election Officer concludes that, regardless of whether they are viewed as isolated incidents or as a pattern, there is insufficient evidence to support a finding of violation of the *Rules*.

III. Improper Campaigning

At Local 776's regular monthly meeting held on September 8, 1991, a motion was made, seconded, and adopted for Local 776 to endorse Ron Carey for IBT General President and John Morris for Eastern Conference Vice President. After the meeting, Local 776 President Griffith contacted Regional Coordinator Peter Marks to inquire whether such an endorsement was proper. Marks replied in a letter dated September 9th that an endorsement of a particular candidate by a Local Union is violative of the *Rules*. At the next monthly meeting of Local 776, President Griffith announced that endorsement of the previous meeting was improper and was rescinded.

It is clear that a Local Union's endorsement of a candidate is improper. The Election Officer has so held in previous protests (see In Re Gebow, 91 Elec. App. 212 affirming Election Office Case No. P-963-LU677-ENG).

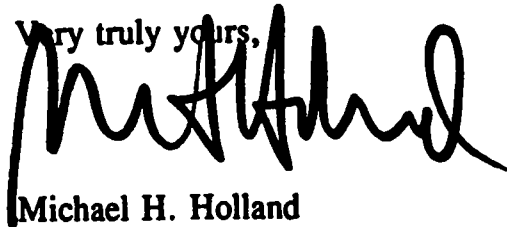
The question posed here is whether the retraction announced by Local 776 at its next monthly meeting is sufficient to remedy the prior improper endorsement. There was no effort to publicize the endorsement; indeed, Local 776 took prompt action to ascertain whether the endorsement was proper and was notified the day after the meeting that the endorsement was invalid. Announcing at its next meeting, which occurred well before the mailing of the International Officer election ballots, that the endorsement was improper and rescinded is precisely the relief afforded in In re Gebow, *supra*. In these circumstances, the Election Officer concludes that the improper endorsement of candidates by Local 776 was adequately remedied by the retraction at the next monthly meeting.

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

Charles Leo Deaner
November 18, 1991
Page 5

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

Peter V. Marks, Sr., Regional Coordinator

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

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

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IN RE:

CHARLES LEO DEANER

and

IBT LOCAL UNION NO. 776

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: 91 - Elec. App. - 235 (SA)
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DECISION OF THE
INDEPENDENT ADMINISTRATOR

This matter arises as an appeal from the Election Officer's decision in Case No. P-1008-LU776-PHL. A hearing was held before me at which the following persons were heard by way of telephone conference: John J. Sullivan, on behalf of the Election Officer; Peter Marks, a Regional Coordinator; the Complainant, Charles Leo Deaner; and Hugh J. Beins, on behalf of Mr. Deaner. In addition, Thomas Griffith, the President of IBT Local 776; and Dale Crum, the Local's Secretary-Treasurer, appeared in person. The Election Officer also submitted a written Summary in accordance with Article XI, Section 1.a.(7) of the Rules For The IBT International Union Delegate And Officer Election (the "Election Rules")

Mr. Deaner is a member and a Business Agent of IBT Local 776. Mr. Deaner claims that the Local has retaliated against him because of his support for the candidacy of R.V. Durham for IBT General President by virtue of its having compelled Mr. Deaner to reimburse to the Local \$82.45 in previously charged laundry expenses. The Election Officer found that the Local had taken action in regards

to Mr. Deaner's laundry expenses because of Mr. Deaner's political ties. The Local appealed that decision.

Mr. Deaner's original protest included several claims of political retaliation. With the exception of the laundry expenses, the Election Officer rejected all of these claims. Mr. Deaner did not file an appeal from the Election Officer's ruling. To understand the Election Officer's determination regarding the laundry expenses, however, it is necessary to briefly review the nature of Mr. Deaner's other allegations.

Mr. Deaner had claimed that he was followed and harassed when he campaigned with Mr. Durham throughout the Local's worksite in August of 1991. The Election Officer determined that such conduct was normal and expected in robust campaigning.

Mr. Deaner had also alleged that at a Local Union meeting in September of 1991, he was required to step down from the stage, where the Executive Board was sitting, and make comments regarding Mr. Durham "from the floor." The Election Officer determined that, because Mr. Deaner was afforded a full right to make his comments, the fact that he was compelled to deliver those comments from the floor rather than from the stage was harmless.

Mr. Deaner also claimed that he was told by the Local's President, Mr. Griffith, to continue a heated discussion he was having with the Local's Recording-Secretary outside of the office. The Election Officer found that Mr. Griffith's response was typical of his response in other similar situations.

Mr. Deaner also charged that an offensive leaflet concerning AIDS appeared anonymously on his desk. The Election Officer determined that there was insufficient evidence to establish the identity of the person who left the leaflet or any connection between the leaflet and Mr. Deaner's International politics.

Lastly, Mr. Deaner alleged that at the September, 1991, Local Union meeting, the Local improperly endorsed the candidacy of Ron Carey for International General President. The Election Officer's investigation confirmed that the Local did initially violate the Election Rules by endorsing Mr. Carey. However, upon learning that its endorsement was improper, the Local took immediate action to announce its error and rescind its endorsement at the very next meeting. Because the action taken by the Local was precisely the relief ordered in In Re: Gebow, 91 - Elec. App. - 212 (SA) (October 28, 1991), the Election Officer concluded that Local 776 had sufficiently remedied its infraction.

This leads us to the one allegation which is the subject of this appeal. Mr. Deaner served as a delegate to the IBT Convention in June of 1991. Mr. Deaner attended that Convention as an active supporter of R.V. Durham and his Durham Unity Team Slate. Mr. Deaner is a visible supporter of the Durham campaign and his support for Mr. Durham is a minority view within Local 776.

As explained by the Election Officer in his Summary:

Local Union 776 does not have a written policy governing reimbursement of expenses for officers and employees who perform Union business out of town. Historically, the custom and practice of Local 776 has been to use a "rule of reason" in the handling of expenses. Prior to the Convention, Mr. Deaner followed

practice of including valet expenses for laundry and cleaning on his expense reports, and the Local reimbursed him for those expenses.

Shortly after the Convention, Mr. Deaner was advised by the Local's Secretary-Treasurer, Mr. Crum, that the Local disallows laundry expenses. Mr. Deaner had submitted some laundry receipts as part of his Convention expenses. Apparently, on the advice of the Local's accountant, the Executive Board reviewed the expenses for all of its Officers and Business Agents dating back to January of 1991 (the date that the Executive Board took office), to determine whether or not any of its Officers or Business Agents had previously submitted claims for laundry expenses. That investigation revealed that only Mr. Deaner had submitted laundry expenses and that \$82.45 had been paid to Mr. Deaner for such expenses since January of 1991. This figure included the laundry expenses claimed by Mr. Deaner at the IBT Convention.

On September 16, 1991, Mr. Crum raised the issue of the laundry expenses with Mr. Deaner once again, this time advising him that the decision to disallow the expenses would be retroactive to January 1991, and that Mr. Deaner would be required to reimburse the Local \$82.45 for the previously charged expenses. Mr. Deaner complied with this request under protest.

It is important to note here that at the time that Mr. Crum approached Mr. Deaner the second time in September, many of the other incidents that were the subject of Mr. Deaner's original protest had recently taken place. For example, Mr. Deaner had accompanied Mr. Durham on various campaign trips throughout the

Local on August 14-15, 1991. Mr. Deaner also made his comments regarding Mr. Durham from the floor of the September Local Union meeting. At that same meeting, the motion to support Ron Carey was adopted.

The Election Officer concluded that the Local had changed its policy regarding laundry expenses after it discovered Mr. Deaner had submitted such expenses. The Election Officer also found that requiring Mr. Deaner to reimburse the Local for past expenses constituted retaliatory conduct in violation of the Election Rules. As set forth in the Election Officer's Summary:

It occurred at a time when Mr. Deaner had announced his support for a candidate opposed by the Local Union and, indeed, was engaged in active campaigning for that candidate. The decision also occurred at a time when the political differences between the Local Union Officers and Mr. Deaner were quite evident, as indicated by the incidents described herein that may not constitute violations of the Election Rules but nonetheless sufficiently establish some degree of political hostility between the protagonists.

The Local defends its action by explaining that its policy regarding laundry expenses was not a new policy, but had always been in effect. It never discovered that Mr. Deaner was claiming such expenses until Mr. Deaner's Convention receipts were reviewed. This prompted the Local to conduct an audit of the expenses of all of its Officers and Business Agents dating back to the beginning of the year. The Local contends that this was done at the prompting of the Local's accountant who had concluded that "the Department of Labor would treat laundry services as a personal expenditure of the individual Business Agent rather than a customary expense, except in certain very unusual situations."


The decision of the Election Officer is affirmed. Whether the Local had a standing policy regarding disallowing laundry expenses, it is clear that the retroactive application of the prohibition as to receipts already paid on Mr. Deaner's behalf was an act of retaliation against Mr. Deaner arising out of his political allegiance to Durham. Given that the Local had never before retroactively applied a prohibition on expenses renders their justification here suspect.

Moreover, Mr. Deaner alleges that during his confrontation with the Local's Recording Secretary, he was told that the Local would "ruin him politically because of his having charged improper expenses." While the Recording Secretary did not participate in the hearing, the Local did not dispute that such a comment was made and only noted that since there were no third party witnesses to the exchange, Mr. Deaner's version can not be corroborated.

Certainly, the Local was on notice that Mr. Deaner was claiming that the Recording Secretary had made such a statement. In fact, Mr. Deaner submitted an affidavit to the Election Officer setting forth his version of the conversation. The Local certainly could have produced the Recording Secretary to refute Mr. Deaner's recollection, if in fact his recollection was not accurate. At the very least, a responding affidavit could have been submitted. In this connection, I find it significant that the Local's President and Secretary-Treasurer attended the hearing in person in Newark, New Jersey from Harrisburgh, Pennsylvania. Certainly, if the Recording Secretary wanted to be heard, he too could have made

himself available. This is especially so given that he could have been heard via the telephone link established for the hearing. Given this background, I credit Mr. Deaner's version of the conversation. The statement of the Recording Secretary leaves no doubt as to the true motive of the Local regarding the laundry expenses.

Accordingly, for the reasons expressed herein, the decision of the Election Officer regarding the laundry expenses is affirmed. Accordingly, Local 776 shall return to Mr. Deaner, within five days of this decision, the \$82.45 which he paid under protest. Local 776 shall simultaneously file an affidavit with the Election Officer demonstrating that the money has been returned.¹



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

Dated: November 26, 1991

¹ At the hearing Mr. Deaner requested further relief. The Election Officer's remedy here is sufficient to redress the violation found. Accordingly, the request for additional remedies is denied.