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Michael H Holland
Election Officer

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March 11, 1991

VIA UPS OVERNIGHT

John Reynolds
14235 N 59th Dr
Glendale, AZ 85306

W Terry Moser
Secretary-Treasurer
IBT Local Union 104
1450 S 27th Ave
Phoenix, AZ 85005-8090

Re. Election Office Case No. P-602-LU104-RMT

Gentlemen

This 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 ("Rules"). In his protest, John Reynolds alleges that on February 27, 1991, at a regular membership meeting of Local 104, one of the members tried to make a public announcement that Ron Carey, candidate for General President of the IBT, was going to be in Phoenix on Sunday, March 3, 1991, to speak to IBT members. Mr Reynolds contends that Terry Moser, Secretary-Treasurer of the Local, prevented the member from making the announcement, saying that such an announcement could not be made at a general meeting. Mr Reynolds asserts that similar announcements have been permitted at prior Local Union meetings. Further, he contends that Terry Goodard, a candidate for governor in the State of Arizona, and other public political candidates have spoken at Local Union membership meetings.

Election Officer Adjunct Coordinator John Wilderman investigated this protest and interviewed Mr Moser. On February 27, 1991, Local 104 held its regular monthly membership meeting. The meeting was chaired by Virgil Hunt, Vice President, about 40 members attended. During that meeting, under "new business," one member, whose name Mr Moser did not know, attempted to make an announcement about Ron Carey's Phoenix meeting. Before the member could finish his announcement, Mr Moser raised a point of order, stating that the announcement violated the Local's policy against intra-Union electioneering. The chair permitted statements both for and against this point of order. Four members spoke, two members on each side of the point of order. The chair then ruled that the announcement was out of order.

Mr Moser states that the Local Union has a long standing policy of not permitting any electioneering at Local Union meetings in regard to intra-Union elections. In his opinion, this policy would include the exclusion of announcements such as the one about the Ron Carey appearance. Therefore, he raised his point of order which was sustained by the chair. While no announcement was permitted at the meeting, flyers announcing the time and date of Mr Carey's appearance were passed out before and after the membership meeting.

Mr Moser admitted that Terry Goodard, candidate for governor of the State of Arizona, had spoken at a membership meeting of Local 104. He agreed that other candidates had also been permitted to make speeches at Local Union membership meetings.

Mr Moser draws a distinction between public political matters which affect the members of Local 104 and about which the Local can, and has, taken a position such as endorsing a candidate or supporting particular legislation. He notes that the Local has a full-time political action representative who makes monthly reports on public political activities at the membership meeting. There is no allegation, and the Election Officer investigation has uncovered no evidence, that intra-Union political matters or election contests have ever been raised or discussed at Local 104 membership meetings.

Article VIII, § 10 (c) of the *Rules* provides that Union facilities may not be used in campaigning unless such facilities are made equally available to all candidates. Article VIII, § 10 (d) provides that no restrictions may be placed upon candidates' or members' pre-existing rights to engage in campaign activities on the Union premises.

Applying these general principles to the facts of this situation requires that this protest be DENIED. Local 104's membership meetings have not been open for intra-Union political messages or campaigning. Like an official company or Union bulletin board where only official notices are posted, Local 104's membership meetings have permitted the discussion of official Union matters only. A distinction may be made consistent with the *Rules* between permitting public political candidates to speak or discussing public legislative issues, since these matters have an identical impact on the entirety of the Local's membership, and prohibiting the discussion of intra-Union political matters. Further, as noted above, the members were able to convey their political message by passing out leaflets to the members as they came in and left the meeting.

On the foregoing basis, this 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

John Reynolds
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& 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,

A handwritten signature in black ink, appearing to read "Michael H. Holland", written over the typed name below.

Michael H Holland

MHH/mca

cc Frederick B Lacey, Independent Administrator
Bruce Boyens, Regional Coordinator

3/25/91 KM usual ditto as

104/RMT

IN RE:

JOHN REYNOLDS

Complainant,

and

W. TERRY MOSER,
IBT LOCAL UNION NO. 104,

Respondents.

91 - Elec. App. - 104 (SA)

DECISION OF THE
INDEPENDENT ADMINISTRATOR

RECEIVED
MAR 22 1991

X MHH
BJH
JS

This matter arises out of an appeal from a March 11, 1991, decision of the Election Officer in Case No. ~~602-10104-RMT~~. A hearing was held before me by way of telephone conference on March 19, 1991, at which the following persons were heard: John Sullivan on behalf of the Election Officer; the Complainant John Reynolds; Don Swartwood, a member of Local 104; Richard M. Esquivel, a member of Local 104, Jack Levin, another member of the Local; Terry Moser, Local 104's Secretary-Treasurer; and Michael Keenan, an attorney on behalf of the Local.

On February 27, 1991, at a regular membership meeting of Local 104, Mr Levin tried to make a public announcement that Ron Carey, an accredited candidate for General President of the IBT, was scheduled to appear in Phoenix on March 3, 1991, to speak to IBT members. Secretary-Treasurer Moser raised a point of order contending that such announcements, concerning intra-union politics or electioneering, were not allowed at membership meetings. After hearing debate from four members on both sides of the question,

Vice-President Virgil Hunt, who chaired the meeting, sustained the point of order and ruled that the announcement could not be made.

Mr. Reynolds contends that by preventing Mr. Levin from making his announcement, the Local violated the Rules for the IBT International Union Delegate and Officer Election (the "Election Rules"). Article VIII, Section 10.d. of the Election Rules provides that no restrictions may be placed on a member's pre-existing rights to engage in campaign activities on union premises. Insufficient evidence was presented to the Election Officer, however, that the Local had a pre-existing practice of accepting announcements or discussions concerning intra-union politics as an item of business at general membership meetings. Thus, the Election Officer concluded that there was no violation of the Election Rules.

The Complainant, Mr. Levin, and the other members of Local 104 who testified at the hearing before me noted that political speakers have appeared at union meetings in the past. For example, Terry Goddard, a candidate for Governor of Arizona supported by the union officers, was allowed to address the January 1991 meeting. These instances, however, are clearly distinguishable from intra-union politics. As noted by the Election Officer in his Summary:

It is clear that discussion and addresses concerning general political subjects of interest to the membership are allowed at the membership meetings. The Local Union obviously has an interest in its elected legislative and executive officials and in the views they express to their constituencies. Indeed, the meetings generally include a report on the activities of the Local's political action committee.

It was also suggested that during campaigns for Local Union Office, certain incumbent officers used the general membership meetings to speak to the membership concerning their past performance. Mr. Moser emphasized, however, that at every general membership meeting the incumbents report to the membership on their work. Even if I were to accept the fact that such reports are heightened or intensified during campaigns for Local Union office, there would still be insufficient evidence that a pre-existing practice existed in Local 104 of accepting announcements concerning intra-union politics as an item of business at general membership meetings.

Accordingly, the Election Officer's ruling is affirmed

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

Dated: March 21, 1991