



OFFICE OF THE ELECTION OFFICER  
% INTÉ ATIONAL BROTHERHOOD OF TEA( TERS  
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Washington, DC 20001

Michael H. Holland  
Election Officer

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May 29, 1991

Arthur N. Snow  
3 Visby Avenue  
Plainville, MA 02762

Gerald F. Gross  
Secretary-Treasurer  
IBT Local Union 653  
471 Prospect Street  
Brockton, MA 02403

Re: Election Office Case No. P-708-LU653-ENG

Gentlemen

A protest was filed with the Election Officer pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Election Rules*") In that protest, Arthur N. Snow alleges that the Election Rules were violated by Gerald F. Gross as a result of the distribution of a piece of campaign literature, paid for with Local Union funds, at a Local meeting called to discuss the National Master Freight agreement. The Election Officer's investigation of this protest reveals the following:

In late March, 1991, Local Union 653 held a freight meeting to hear presentations on the tentative National Master Freight Agreement. The meeting was chaired by Gerry Gross, the Secretary-Treasurer of Local Union. During the meeting materials were distributed concerning the proposed agreement. In addition, Mr. Gross distributed, also during the meeting, a two-sided leaflet with the caption "Ask Delegate Candidates Pledged to Ron Carey". There is no evidence that Mr. Gross made any oral campaign statements at the meeting.

The leaflet compares the benefits available to members of Local Union 391 under the Central States health and welfare plan with the benefits available under the Local Union 804 plan allegedly negotiated by Ron Carey. The leaflet alleges that Ron Carey "put money to JACK UP HIS PENSION PLAN AT THE EXPENSE OF THE L U 804 HEALTH PLAN" (emphasis in original). The leaflet further alleged that the Local Union 804 Health Plan had a 12 million dollar deficit and that Carey would have to reduce benefits further. The leaflet, in its original form, concludes with the statement "Vote for Proven Leadership You Know You Can Trust, Vote for the Durham-Blevins Unity Team Delegates". The original leaflet was prepared by a member of Local Union 391 as part of the campaign for the election of the Durham/Blevins Unity Team.

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Delegates, a slate of delegates and alternate delegates from Local Union 391<sup>1</sup>

The leaflet distributed at the Local Union 653 freight meeting had an additional column indicating the benefits available under the Health Plan negotiated by Local Union 653. The altered version of the leaflet concludes with the statement "[t]his information is being provided to you for the purpose of helping you cast an informed, intelligent vote for IBT General President". Five hundred copies of the leaflet were produced, at Local Union 653 expense, at the cost of \$49.98.

Article VIII, Section 10(c) of the *Election Rules* provides that Union funds and facilities may not be used for campaign purposes unless the Union is reimbursed, all candidates have equal access to such funds and facilities and all candidates are so notified by the Union in advance. Article VIII, Section 4 of the *Election Rules* provides that all candidates shall have equal access to Union meetings for campaign purposes. Similarly, Article VIII, Section 10(d) provides that no restrictions shall be placed upon a member's pre-existing right to engage in campaign activities, including the distribution of campaign literature, on Union premises. The *Election Rules* further provide that the opportunity to engage in such campaign activity shall be available on the same basis to all candidates and members.

The Election Officer finds that Mr. Gross violated the *Election Rules* when he used Local Union funds to pay for the leaflet in question. The pamphlet in question is clearly designed to influence the election for IBT General President, it clearly is campaign literature. The purpose, object or foreseeable result of its distribution was to influence the election of the IBT General President. Thus the utilization of the Union funds to pay for the duplication of the leaflet is clearly violative of Article X, § 1, (b)(3) of the *Rules*. In re. Committee to Elect Ron Carey, 91-Elec App -106 (March 22, 1991).

The leaflet in question was distributed during the business portion of a meeting called by the Local Union. Neither IBT General President candidates nor Local 653 members holding a position on the IBT General President election different from that of Mr. Gross, were granted a similar opportunity, in violation of Article VIII, § 4(a) of the *Election Rules*.

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<sup>1</sup> The Election Officer's investigation revealed that the original leaflet was prepared by the member on his own time using information regarding health and welfare benefits generally available to beneficiaries of the Central States Health and Welfare Fund. The Election Officer also determined that the preparation of the leaflet did not involve the expenditure of resources of the Union or the Central States Health and Welfare Fund or any other person or entity prohibited from making campaign contributions under Article XI of the *Election Rules*.

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To remedy the Mr Gross' violation of the *Election Rules*, the Election Officer orders the following

1 Mr Gerald F Gross shall, with ten days of the date of this decision, personally reimburse Local Union 653 for the costs of duplicating the leaflet in question, i e , \$49 98

2 Mr Gross shall cease and desist from any further use of Local Union funds for the production of campaign literature,

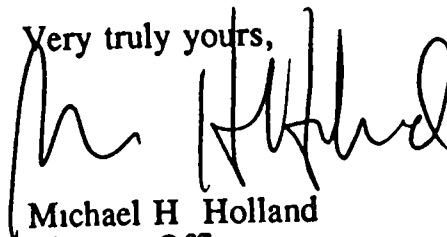
3 Mr. Gross shall, within ten days of the date of this decision, sign and duplicate, at his own expense, sufficient copies of the attached notice for posting on all Union bulletin boards at all freight facilities employing Local Union 653 members

4 Local Union 653 shall permit, upon request, any candidate for the office of General President of the IBT, or IBT members supporting such candidate, the opportunity to distribute campaign literature at a meeting of the membership of Local Union 653 Each IBT General President candidate may choose the meeting at which his literature is to be distributed The Secretary-Treasurer of Local Union 653 shall, upon request, inform such candidates, or their supporters, of the dates, times and places of membership meetings of the Local Union

5 The Secretary-Treasurer of Local Union 653 shall submit to the Election Officer, within 15 days of the date of this decision, an affidavit setting forth, in detail, the compliance with 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 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  
Election Officer

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MHH/pjm

cc Frederick B Lacey, Independent Administrator, IBT  
Elizabeth A Rodgers, Regional Coordinator  
R V Durham  
Ron Carey  
Walter Shea  
William F Genoese  
Louis D Riga