

OFFICE OF THE ELECTION OFFICER  
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
25 Louisiana Avenue, NW  
Washington, DC 20001

Michael H. Holland  
Election Officer

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September 6, 1991

**VIA UPS OVERNIGHT**

Jack Barmon  
11760 S.W. 83rd Court  
Miami, FL 33156

Tony Cannestro  
President  
IBT Local Union 769  
8350 N.W. 7th Ave.  
Miami, FL 33150

**Re: Election Office Case No. P-869-LU769-SEC**

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules") by Mr. Jack Barmon. Mr. Barmon is a member of Local 769 in Miami, Florida and was one of Local 769's duly elected delegates to the 1991 IBT International Union Convention. In his protest, Mr. Barmon alleges that Local Union funds and facilities were used to distribute campaign literature critical of Mr. Barmon's political views and his support for Ron Carey's campaign for IBT General President. Mr. Barmon also alleges that business agents of Local 769 and management personnel distributed campaign literature during working hours to members working at several facilities within the jurisdiction of Local 769.

An investigation was conducted by Don Williams, the Election Office Regional Coordinator. The investigation revealed the following facts. Local 769's delegate election was held on February 1, 1991. Mr. Barmon was elected as delegate from Local 769 and was a member of the "Florida Teamsters for Carey Slate." All of the other members of Mr. Barmon's slate were also elected as delegates from Local 769. The losing slate in Local 769's delegate election was comprised of Local Union officers and business agents. On May 16, 1991, a general membership meeting was held at the Local Union hall. During the membership meeting, a resolution was passed pertaining to the 1991 IBT International Union Convention. On May 20, 1991 a copy of the resolution entitled "Special Notice" was posted on all Local Union bulletin boards and mailed to all of the duly elected delegates and alternates of Local 769.

After the conclusion of the Convention to which the resolution pertained, Mr. Barmon notified Tony Cannestro, President of Local 769, that he wished to rebut various

provisions of it. Mr. Barmon requested that the Local post a copy of his rebuttal on all Local Union bulletin boards and mail a copy to all members of Local 769. Mr. Barmon's rebuttal was entitled "Convention Bulletin." The "Convention Bulletin" consists of printed campaign literature prepared in support of Mr. Carey's candidacy and includes portions which are typed, as opposed to printed, which refer directly to Local 769, the May 20, 1991 resolution and the activities of its delegates at the Convention. On August 8, 1991, Mr. Cannestro informed Mr. Barmon that the Local would not comply with his request. After receiving the August 8, 1991 letter from Mr. Cannestro, Mr. Barmon filed a protest with the office of the Election Officer.

#### **I. POSTING AND DISTRIBUTION OF MAY 20, 1991 RESOLUTION.**

Mr. Barmon protests Local 769's refusal to post a copy of his "Convention Bulletin" on all Local Union bulletin boards as well as the Local's refusal to mail a copy of his bulletin to all Local 769 members. Mr. Barmon bases his protest on his contention that the May 20, 1991 resolution posted on all Local Union bulletin boards on Local Union 769 letterhead constituted campaign literature within the meaning of the *Rules*. Thus, he contends that to comply with the system of equal treatment set forth in the *Rules*, his campaign literature, the "Convention Bulletin," should be distributed at Local expense at least as widely as the Local distributed the May 20, 1991 bulletin. Mr. Barmon further claims that Local 769 violated Article VIII, § 6 of the *Rules* which prohibits the use of Local Union funds and/or facilities to support or negate the candidacy of any candidate for IBT delegate, alternate delegate or International officer.

The resolution passed on May 20, 1991 and posted on all the Local Union bulletin boards reads as follows:

**TO: ALL MEMBERS OF TEAMSTERS LOCAL UNION NO. 769**

#### **SPECIAL NOTICE**

At the regular General Membership Meeting, which was held on Thursday, May 16, 1991, at the Union hall, the following Resolution was read. A motion was made and properly seconded to adopt the following Resolution. The vote was unanimous.

#### **RESOLUTION**

WE, the undersigned members of Teamsters Local Union No. 769, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, Petition Local 769 Executive Board as follows:

WHEREAS, the International Union is holding it's [sic] International Convention in June, 1991, and,  
WHEREAS, outside influences are drastically affecting our Local Union and the International Union, and  
WHEREAS, We, being fearful of the elected delegates of Teamsters Local Union No. 769 being misguided in regards to candidates of the General Executive Board, and

WHEREAS, health care costs are overtaxing all members, and

WHEREAS, We, foresee no improvement in our ability to organize employees in the South, and,

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WHEREAS, We, desire the elected delegates of this Local Union to represent ALL it's [sic] members, and

THEREFORE BE IT RESOLVED, that the Executive Board of Teamsters Local Union No. 769 adopt the following resolutions,

1. That the International Union consider organizing a priority, especially in the South,
2. That the elected delegates of Teamsters Local Union No. 769 to the convention, help nominate only candidates of excellence, merit and fair representation,
3. That the International Union consider National Health care as a priority, and
4. Be it further resolved that each delegate representing members of Teamsters Local Union No. 769 be each given a copy of the Resolution and ALL members of Teamsters Local Union No. 769 be informed of the above resolutions.

SHOP STEWARDS - PLEASE POST!

The resolution was typed on Local Union 769 letterhead and copies were posted on all Local Union bulletin boards by business agents and stewards from Local 769. In addition, a copy of the resolution was mailed to all the duly elected delegates and alternate delegates from Local 769. The cost of the mailing was borne by Local 769.

Mr. Barmon argues that the resolution constitutes campaigning within the meaning of the *Rules* and he therefore objects to the resolution appearing on Local Union letterhead and being distributed through the use of Local Union funds and/or facilities. He also argues that the Local further violated the *Rules* by denying him equal treatment by refusing to distribute his "Convention Bulletin" at Local expense.

In support of his claim that the resolution constitutes campaign literature, Mr. Barmon points to the second and third clauses of the resolution, which refer to outside influences drastically affecting the Local Union and the International Union as well the fear that the elected delegates of Teamsters Local Union No. 769 are misguided in regards to the candidates of the General Executive Board. Mr. Barmon maintains that the third clause of the resolution refers to his slate's support for Ron Carey's campaign for General President of the IBT. Mr. Barmon also argues that the second clause's reference to "outside influences affecting the Local and International Union" refers to the U.S. Government, the Consent Decree and the Election Officer and that such a reference undermines the credibility of his entire slate as well as Ron Carey's candidacy for General President. Mr. Barmon argues that such a reference undermines his slate because his slate supports the democratic provisions of the Consent Decree. Mr. Barmon further claims that the resolution's reference to the delegates representing all the members of Local 769 also negatively impacts on Barmon's political views and by implication, Ron Carey's campaign for IBT General President.

Article VIII, § 7 of the *Rules* provides that:

No Union-financed publication or communication may be used to support or attack the candidacy of any person, except as authorized by Sections 8 and 9 of this Article. Therefore, the following regulations apply:

(1) During either a nomination or election campaign, the Union newspaper or publication shall not:

(a) use a larger or more attractive picture of someone than had previously been used if that person is a candidate, unless there is a valid journalistic reason for it;

(b) print uncomplimentary pictures of any candidate;

(c) print features and accompanying photographs about insignificant or unnewsworthy events in which the accomplishments or qualities of any candidates are heralded; or

(d) carry a substantial number of articles or pictures featuring a particular candidate unless all candidates for the same position are given equal treatment, equal space and equal prominence.

The Election Officer has reviewed the May 20, 1991 resolution in accordance with the provisions set forth in Article VIII, § 7 of the *Rules* and hereby finds that the resolution does not constitute campaign literature within the meaning of the *Rules*. The Election Officer bases his decision on the following significant factors. The resolution does not contain the name of Ron Carey or any other candidate for IBT International office. The reference to outside influences contained in the resolution at most refers to the role of the federal government and the Court Officers, not to the candidacy of Ron Carey or any other candidate for IBT International Union office. The statements contained in the resolution are vague and ambiguous and do not reflect negatively upon the candidacy of any candidate for IBT International Union officer. To the extent that the resolution provisions may be read to indirectly undermine the duly elected delegates from Local 769, such references obviously have no bearing on the outcome of Local 769's delegate election, which was held approximately three months prior to the posting of the resolution.

In addition, the fact that the resolution directs the elected delegates from Local 769 to represent all of Local 769's members can also not be considered campaigning within the meaning of the *Rules*. Such references are general in nature and do not undermine the candidacy of Mr. Carey.

Accordingly, since the resolution does not constitute campaigning within the meaning of the *Rules*, Local 769 did not violate the *Rules* by posting a copy of the resolution on Local Union letterhead and by mailing copies of the resolution to the duly elected delegates and alternate delegates from Local 769. Since the literature is not campaign literature, Local 769 was permitted to utilize business agents and other employees of the Local to post the notice on all Local Union bulletin boards. Since the resolution does not constitute campaign material, Mr. Barmon was not entitled to have his campaign material distributed by the Local. Therefore, the above-referenced protest with respect to the posting and mailing of the May 20, 1991 resolution is hereby DENIED.

## II. USE OF UNION AND EMPLOYER FUNDS DISTRIBUTE CAMPAIGN LITERATURE.

Mr. Barmon also alleges that employer and Union funds were used to distribute campaign literature in violation of Article VIII of the *Rules*. In support of his allegation, Mr. Barmon states that on or about May 20, 1991, copies of a pamphlet entitled "T.O.U.R. - Teamsters for Our Union Rights" began appearing at different worksites throughout the jurisdiction of Local 769. Mr. Barmon alleges that employees of the Local, specifically business agents, distributed the literature on Union time. Mr. Barmon further alleges that some management representatives also distributed the pamphlets on behalf of Local 769. Mr. Barmon does not allege and the Election Officer's investigation did not disclose that this pamphlet was prepared or duplicated at Union expense.

Don Williams, the Election Office Regional Coordinator, asked Mr. Barmon if he personally witnessed any business agents or management representatives distributing the pamphlet. Mr. Barmon stated that he did not. Mr. Williams asked Mr. Barmon if he had received information from any other persons indicating that Union representatives or management personnel distributed the literature on company or Union time. Mr. Barmon stated that he had no information with respect to these allegations other than having been advised by one of his co-workers that Tony Cannestro, Jr., a business agent with responsibilities at UPS, was observed distributing the pamphlet as he left an employer facility after discussing a grievance involving the employer and a member of Local 769.

Mr. Barmon advised Mr. Williams that, in his view, which is consistent with the Election Officer's view, Mr. Cannestro's conduct was incidental to his legitimate Union business at the facility on that date and would not constitute a violation of the *Rules*. Mr. Williams also discussed the allegation with Mr. Cannestro, Jr., and Mr. Cannestro, Jr. confirmed that he distributed the pamphlet for approximately five minutes as he was leaving the plant after meeting with a member concerning a pending grievance.

Article VIII, § 10(b) provides that:

All Union officers and employees, if members, retain the right to participate in campaign activities, including the right to run for office, to openly support or oppose any candidate, to aid or campaign for any candidate, and to make personal campaign contributions. However, such campaigning must not involve the expenditure of Union funds. Accordingly, members, officer and employees of the Union may not campaign on time that is paid for by the Union. campaigning incidental to regular Union business is not, however, violative of this section. Further, campaigning during paid vacation, paid lunch hours or breaks or similar paid time off is not a violation of this section.

As stated above, Article VIII, §§ 10(a) and (b) of the *Rules* prohibits the expenditure of Union or employer funds to support or negatively impact the candidacy of any individual. Article VIII, § 10(b) further provides that campaigning incidental to regular Union business or work time does not violate the *Rules*.

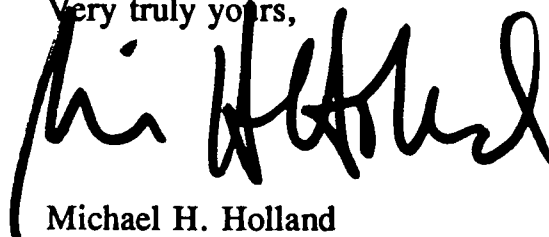
The investigation did not reveal any facts to support Mr. Barmon's allegation that Local Union funds or employer funds were used to distribute campaign literature. The only fact even suggesting that Local Union employees distributed the literature relates to Mr. Cannestro's distribution of the pamphlet as he left a worksite facility after attempting to resolve a grievance. The evidence establishes that Mr. Cannestro, Jr. was involved in legitimate Union business and passed the pamphlet out as he left the plant. Clearly, such conduct was incidental to legitimate Union business at the plant and would not constitute a violation of the *Rules*. Thus, the investigation did not reveal sufficient facts to indicate that a violation of the *Rules* has occurred. Accordingly, Mr. Barmon's protest with respect to this allegation is also 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 & 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,

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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". The signature is written in a cursive, somewhat stylized font with a large initial "M".

Michael H. Holland

MHH/cb

cc: Frederick B. Lacey, Independent Administrator  
Donald H. Williams, Regional Coordinator