



OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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Election Officer

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September 20, 1991

VIA UPS OVERNIGHT

Carl Gentile
Richard R. Foley
c/o Robert Baptiste, Esquire
Baptiste & Wilder
1919 Pennsylvania Avenue, N.W.
Suite 505
Washington, D.C. 20006

Ernest R. Tusino
Secretary-Treasurer
IBT Local Union 170
805 Millbury Street
Worcester, MA 01420

William W. Miley
George C. Valeri
Albert A. Stearns
George R. Valery
Matteo DeSalvio
Frederick Barry
Frank G. Beshai
c/o IBT Local Union 170
Worcester, MA 01604
805 Millbury Street
Worcester, MA 01420

Re: Election Office Case No. P-885-LU170-ENG

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Robert M. Baptiste as counsel for Carl Gentile and Richard Foley, both of whom are members and business agents of IBT Local 170.¹ The protest contends that Ernest Tusino, Secretary-Treasurer of Local 170, has filed internal union charges against Mr. Gentile and Mr. Foley in retaliation for their exercise of political rights under the March 14, 1989 Consent Order and the *Rules*.

¹ Mr. Gentile is also the President of Local 170. Both Mr. Gentile and Mr. Foley were certified delegates to the 1991 IBT International Union Convention from Local 170.

The facts which give rise to the instant protest were the subject of a prior protest filed by Vincent McGee, a member of Local 170. In his protest Mr. McGee complains that a letter sent to Local Union members by Richard Foley violated the *Rules* since Union resources were inappropriately used for the preparation and dissemination of the letter. The Election Officer gave credit to Mr. Gentile. Nonetheless, the Election Officer denied that protest by letter dated September 9, 1991 finding that he did not have jurisdiction over the subject matter of the protest. The Election Officer found in that the only campaigning contained in the letter was for Mr. Gentile. But Mr. Gentile is no longer a candidate for delegate; that election is over. Mr. Gentile is not a candidate for any International officer position. The Election Officer found that while Mr. Gentile may be a candidate for Local Union office and while the letter could be construed as campaign material on his behalf for said office, the jurisdiction of the Election Officer does not extend to the nomination and election processes for Local Union officers. The protest was therefore DENIED. See Election Office Case No. P-832-LU170-ENG.

For the same reasons, the Election Officer has no jurisdiction over the internal union charges brought by Mr. Tusino against Mr. Gentile and Mr. Foley or the conduct of the hearings on said charges.² Whether the charges brought by Mr. Tusino are retaliatory or whether the hearings were conducted in an undemocratic manner, it is clear that the charges and hearings do not implicate the International Union officer election process and thus are matters beyond the jurisdiction of the Election Officer.

The charges on their face concern the propriety of the actions taken by Mr. Foley and Mr. Gentile in producing, duplicating and distributing the letter which was the subject of the protest in Election Office Case No. P-832-LU170-ENG. Since the issue of the propriety of that letter, including the method of its preparation and distribution, are not within the Election Officer's jurisdiction, neither are the intra-union charges concerning such letter.

The protestors assert, however, that the motivating factor for the charges being filed was Messrs. Gentile and Foley's support for a policy matter voted on at the 1991 International Union Convention, i.e., the proposal to increase the strike benefits paid by the IBT beyond the amount recommended by the Constitution Committee. The protestors contend that nominated General President candidate, R.V. Durham, who they claim is supported in his candidacy by Mr. Tusino, opposed the increase. The protestors claim that Mr. Tusino brought the charges to retaliate against Mr. Foley's and Mr. Gentile's role in "embarrassing" Mr. Durham at the Convention.

² The Election Officer was advised by Mr. Tusino that the charges have been withdrawn pursuant to an agreement between the Local and Messrs. Gentile and Foley. Mr. Baptiste, on behalf of Messrs. Gentile and Foley, disputes this assertion.

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Although the filing of charges in retaliation for campaign activity undertaken on behalf of or in opposition for a candidate for International Union office is violative of the *Rules*, the positions espoused by Messrs. Gentile and Foley at the Convention -- which positions Messrs. Gentile and Foley claim is the motivating factor for the intra-union charges being brought against them -- was not campaign activity on behalf of or in opposition to any International Union officer candidate. The debate over the amount of strike benefits in which Messrs. Gentile and Foley participated was a debate on a policy issue. That the positions take by the various candidates for International office during the debate may be a subject which is raised during the International Union officer election campaign does not make Messrs. Foley's and Gentile's activity campaign activity. Any statement made or any position taken on any policy matter by any of the nominated candidates for International office may become "grist for the political mill."

Assuming that the position taken by Mr. Durham on this policy issue is being utilized to Mr. Durham's detriment in the International Union officer election campaign and since Mr. Tusino supports Mr. Durham and is thus angry with Messrs. Gentile and Foley for putting his -- Mr. Tusino's -- candidate in an unfavorable position, the entire matter is too tangentially related to the International Union officer election process to permit the Election Officer to assert jurisdiction over this protest. For these reasons the Election Officer determines that the instant protest is beyond his jurisdiction and the protest is DENIED on that basis.

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

MHH/mjv

cc: Frederick B. Lacey, Independent Administrator

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Elizabeth A. Rodgers, Regional Coordinator (For Information Only)

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