



OFFICE OF THE ELECTION OFFICER  
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
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Washington, DC 20001

Michael H. Holland  
Election Officer

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September 10, 1991

**VIA FACSIMILE WHERE INDICATED AND UPS OVERNIGHT**

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Harold Leu  
c/o Durham Unity Team  
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Bob Smeltzer  
Operations Manager  
Faygo Bottling Plant  
3579 Gratiot Avenue  
Detroit, Michigan 48207  
FAX: 313-925-6311

**Re: Election Office Case No. P-894-LU337-MGN**

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules") by Rob Naslanic, a member of IBT Local Union 243. In his protest, Mr. Naslanic contends that Faygo Bottling Plant, an employer of IBT members, permitted International Union officer candidates R. V. Durham, Harold Leu and Larry Brennan, candidates for General President, General Secretary-Treasurer and Vice President from the Central Conference respectively on the Durham Unity Team, access to its facilities for campaign purposes. Mr. Naslanic contends that Faygo has refused to permit him or the IBT candidate for General

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President whom he supports, Ron Carey, similar access. Mr. Naslanic is neither a member of Local Union 337, the Local which represents employees at Faygo, nor an employee of Faygo. The protest was investigated by Regional Coordinator, James De Haan.

In or about the first week of August Bob Smeltzer, Operations Manager for the Faygo bottling plant in Detroit, Michigan, received a call from a business agent from Local Union 337. During the conversation this agent, Mr. Walker, asked Mr. Smeltzer if he could bring an IBT officer through the facility. Mr. Smeltzer consented. Under and in accordance with the terms of the collective bargaining agreement, and as required by substantive federal law, IBT officers and agents including officers and agents of the parent bodies of Local Union 337, have the right of access to the Faygo facility in furtherance of the Union's collective bargaining rights and obligations. Mr. Smeltzer states that he was told that the purpose of the requested visit was in furtherance of these objectives.

On August 13, 1991 Messrs. Durham, Leu and Brennan along with reporters and photographers from The Detroit News arrived at the Faygo facility in Detroit, Michigan. Mr. Smeltzer states that when this group arrived he realized that this visit was not a normal visit in accord with the collective bargaining duties and obligations of the Union; he stated that he understood, at that point, that the visit was in furtherance of the International Union officer election campaigns. Nonetheless, Mr. Smeltzer permitted Messrs. Durham, Leu and Brennan along with the representatives of The Detroit News entry and access to the Faygo facility. The group remained in the facility and engaged in campaigning activities, which were recorded by the press representatives, for approximately the one half-hour period between the end of the day shift and the start of the second or afternoon shift.

The investigation reveals that Mr. Naslanic, as a supporter of IBT nominated General President candidate Ron Carey, sought access to Faygo's facilities to engage in similar campaign activities on behalf of Mr. Carey. He was denied any access to Faygo's property.

Article VIII §10(d) of the *Rules* provides that no restrictions shall be placed upon International Union officer candidates' rights to solicit support, distribute leaflets and the like on employer premises. As noted in the Advisory Regarding Political Rights, issued December 28, 1990, pre-existing rights are rights established under substantive law or rights established by reason of the prior practices of the employer. In this case the employer permitted a candidate for General President, a candidate for General Secretary-Treasurer and a candidate for Vice President from the Central Conference, all associated with one of the slates of candidates seeking election to IBT International Union office, access to its facilities for campaign purposes. Under and in accordance with the *Rules*

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the employer must permit similar access to all other candidates for International office in the IBT.

The Election Officer has an obligation to enforce the *Rules*. The *Rules* were adopted by the United States District Court for the Southern District of New York, United States v IBT, 742 F. Supp 94 (S.D.N.Y., 1990): their adoption was approved by the United States Court of Appeals for the Second Circuit, United States v IBT 931 F. 2d 177 (2nd Cir., 1991). The United States District Court for the Southern District of New York has ruled that the Election Officer and the Independent Administrator have the authority to enforce the *Rules* against employers of IBT members. United States v IBT (In re: Yellow Freight Systems, Inc.) No. 88-CIV-4486 (DNE) slip op. (S.D.N.Y., April 3, 1991).

In accordance with the foregoing the Election Officer GRANTS the protest. The Election Officer orders that Faygo bottling plant permit all candidates seeking election to International Union officer positions in the 1991 International Union officer election access to its facilities for campaign purposes. No candidate need be permitted access on more than one occasion. All candidates may be accompanied during the period of their campaign visit to Faygo by others, including press representative and/or photographers; however in no case may the number of persons entitled to access -- including the candidate(s) -- exceed ten (10). All such candidates or their representatives shall give reasonable prior notice to Faygo of the time and date of their visit.

Under normal circumstances reasonable prior notice shall mean notice at least forty-eight (48) hours in advance of the visit. At this location, however, Mr. Carey's supporters have previously but unsuccessfully sought campaign access. Further, the Election Officer has been informed by the protest here that Ron Carey, a nominated International Union officer candidate for IBT General President, will be in the Detroit area for campaigning purposes on September 11, 1991. Given the timing of such pre-planned campaign trip, the Election Officer determines that with respect only to Mr. Carey and his campaign trip to Detroit, Michigan which is commencing on September 11, 1991 -- assuming that Mr. Carey wishes to gain access to the interior of the Faygo facility for campaign purposes during such trip -- four hours advance notice shall be considered sufficient. Further for these reasons an appeal will not stay the Election Officer's remedy for the violation found here. *Rules*, Article XI §2(z).

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

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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,



Michael H. Holland

MHH/cb

cc: Frederick B. Lacey, Independent Administrator

James De Haan, Regional Coordinator

Ron Carey  
c/o Richard Gilberg, Esquire  
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FAX: 718-786-5757

337/MGN

X MHT  
BJH  
JJS

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IN RE:

ROBERT NASLANIC

and

TEAMSTERS LOCAL 337

and

FAYGO BEVERAGES

and

DURHAM UNITY TEAM, R.V.  
 DURHAM, LAWRENCE BRENNAN,  
 HAROLD LEU and ROBERT SANSONE

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91 - Elec. App. - 188 (SA)

DECISION OF THE  
INDEPENDENT  
ADMINISTRATOR

This matter arises out of an appeal from a decision of the Election Officer in Case No. P-894-LU337-MGN. A hearing was held before me by way of telephone conference at which the following persons were heard: the complainant, Robert Naslanic; Paul Levy, on behalf of Mr. Naslanic; Beverly Burns, on behalf of Faygo Beverages, Inc.; John J. Sullivan and Barbara Hillman, on behalf of the Election Officer; and James DeHaan, the Regional Coordinator.

Mr. Naslanic is a member of IBT Local 243. Mr. Naslanic supports Ron Carey's candidacy for IBT General President.

In his protest, Mr. Naslanic contended that Faygo Beverages, Inc. ("Faygo"), an employer of IBT members, permitted General President candidate R.V. Durham, Secretary-Treasurer candidate

Harold Lou, and Central Conference Vice-President candidate Larry Brennan access to its facilities for campaign purposes. All three of these candidates are part of the Durham Unity Team. Mr. Naslanic contended that Faygo refused to permit him or the IBT candidate for General President whom he supports, Ron Carey, similar access. Mr. Naslanic is neither a member of Local Union 337, the Local which represents employees at Faygo, nor is he an employee of Faygo.

Article VIII, Section 10.d. of the Rules For The IBT International Union Delegate And Officer Election (the "Election Rules") contemplates that the right to campaign on employer premises "shall be made equally available on the same basis to all candidates and members." Thus, it is clear that Faygo can not permit candidates from the Durham Unity Team to campaign on its premises but deny that same right to candidates on the Ron Carey Slate.

Accordingly, the Election Officer found a violation of the Election Rules and ordered Faygo to permit other candidates for International office access to its facilities on the same terms offered to the candidates on the Durham Unity Team. While Faygo initially appealed the Election Officer's decision, it subsequently withdrew its appeal. In fact, it appears that candidates aligned with the Ron Carey Slate have already availed themselves of the opportunity to campaign at the Faygo facility.



Mr. Naslanic challenges the remedy, however, arguing that it is not broad enough. Mr. Naslanic contends that by allowing access to some but not all of the candidates, Faygo should have been deemed to have made an improper campaign contribution. See Election Rules, Article X, Section 1.b. It is also suggested that Local 337 also made an improper campaign contribution. Mr. Naslanic urges a much broader remedy including an investigation by the Election Officer of other possible violations of the Election Rules by Durham and his fellow candidates.

Mr. Naslanic's request for additional relief is denied. The Election Officer's remedy here is properly designed to remedy the violation found.

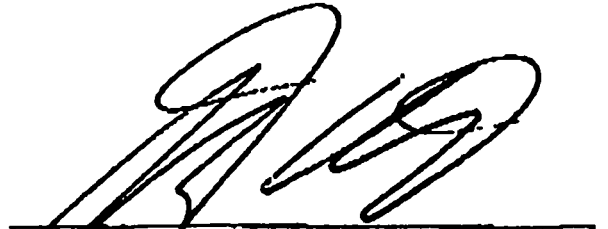
In suggesting that Faygo made an improper contribution by allowing Durham to campaign on its premises Mr. Naslanic ignores the provisions of the Election Rules which prohibits employers from trampling upon candidates' pre-existing rights to campaign on its premises. Election Rules, Article VIII, Section 10.d. The Election Rules are clearly designed to maximize opportunities for campaign activities on employer premises. To find a violation of the Election Rules here, as Mr. Naslanic suggests, would be to chill the campaign access requirements found in the Election Rules.

As for Mr. Naslanic's call for a broader investigation of Durham's campaign activities, I defer to the Election Officer's conclusion that such a request "is both factually unjustified and

unrealistic as a practical matter." As the Election Officer stated in his Summary:

Should Mr. Naslanic or any other IBT members have any such facts or allegations concerning any employer other than the one at issue here, the Election Officer will undertake to investigate those brought to his attention in a properly filed protest. Should the Election Officer, without a protest, uncover evidence of serious violations of the Rules, he can, has and will continue to investigate, and, if a violation is found, remedy those violations.

Accordingly, the decision of the Election Officer is affirmed in all respects.



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

Dated: September 18, 1991