

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

Michael H. Holland
Election Officer

(202) 624-8778
1-800-828-6496
Fax (202) 624-8782

October 10, 1991

VIA UPS OVERNIGHT

Paul Nowlin
5206 Chakanotosa Circle
Orlando, Florida 32818

Gary D. Thornton
Secretary-Treasurer, IBT Local Union 385
122 North Kirkman Road
Orlando, Florida 32811-1498

Larry D. Parker
President, IBT Local Union 385
122 North Kirkman Road
Orlando, Florida 32811-1498

Danny "Pete" Peterson
416 Kreeger Street
Orlando, Florida 32839

Re: Election Office Case Nos. P-929-LU385-SEC and P-935-LU385-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 Paul Nowlin and Danny (Pete) Peterson, members of Local Union 385. In their protest, Messrs. Nowlin and Peterson contend that the official stationery of Local Union 385, Local Union monies and Local Union resources were utilized to promote the candidacy of General President candidate R. V. Durham and the members of his slate in violation of the *Rules*. Mr. Nowlin further contends that a motion passed at the September 21, 1991 prohibiting the distribution of campaign literature and similar types of campaigning at the Local Union hall and at the situs of Local Union meetings violated Local 385's members pre-existing rights as defined in Article VIII, §10(d) of the *Rules*. The protest was investigated by Regional Coordinator Donald H. Williams. Each set of allegations will be dealt with separately below.

I. Campaign Contributions by Local Union 385

Mr. Peterson was a delegate to the 1991 IBT International Union Convention from Local Union 385, having successfully sought that position as a member of the Delegates for the Ron Carey Slate. After the Convention Mr. Peterson and his fellow delegate and slate-mate Mario Ferenac prepared and distributed at their own expense a leaflet entitled

Paul A. Nowlin
October 10, 1991
Page 2

"Local 385 Convention Bulletin." The "Bulletin" was clearly campaign material, favorably highlighting the Convention activity of Mr. Carey and the delegates who supported him. The leaflet was far less complimentary to nominated General President candidates R. V. Durham and Walter Shea and the Convention delegates who supported their candidacies.

The other two delegates to the 1991 IBT International Union Convention from Local 385 were Larry D. Parker and Gary D. Thornton, President and Secretary-Treasurer of the Local respectively. They were opponents of the other two Local 385 delegates during the delegate election for Local 385. They supported General President candidate R. V. Durham.

Messrs. Parker and Thornton responded to the campaign leaflet Messrs. Peterson and Ferenac by a letter dated September 11, 1991 and printed on official Local Union 385 stationery. The letter was prepared and distributed with Local Union funds. The letter was mailed to all Local Union stewards with directions to post; approximately two hundred (200) additional copies of the letter were also prepared and distributed, in part, at the Local's September 21, 1991 meeting.

Article X, §1(b)(1) and (3) of the *Rules* specifically prohibit the utilization of the resources of any IBT entity for campaign purposes. Article X, §1(b)(3) prohibits utilization of the official stationery of the Union for such purposes.

Messrs. Parker and Thornton's responsive letter of September 11, 1991 was campaign material. Not only did the letter state that it was being written in response to the previously distributed material prepared by Messrs. Peterson and Ferenac -- which was obviously campaign literature -- it specifically noted that Messrs. Parker and Thornton support the candidacy of R. V. Durham for General President. The letter also denigrates Messrs. Peterson and Ferenac and, by implication, all other Convention delegates supporting Ron Carey, suggesting that such delegates are "puppets". The letter thus has the effect of negatively impacting the campaign of General President candidate Ron Carey. Preparation, duplication and distribution of this letter with Local Union funds and utilizing Local Union resources, and the use of official Union stationery for this letter, violates the *Rules*. The protest is GRANTED.

To remedy the violation, the Election Officer determines that the Local 385 delegates supporting the General President candidate Ron Carey should be entitled to utilize Local Union resources equal to the resources utilized by Messrs. Parker and Thornton, to present their political position to the Local Union membership. Accordingly, Local Union 385, within seven (7) days after receiving from Messrs. Peterson and Ferenac campaign literature that they wish to have distributed, shall duplicate the materials so submitted and send copies to all Local Union stewards with instructions, similar to the

instructions sent with Messrs. Parker's and Thornton's letter, directing the stewards to post the material on all Local Union bulletin boards. Local 385 shall also within the same seven (7) day period, duplicate an additional two hundred (200) copies of the campaign material and provide it to Messrs. Peterson and Ferenac so that they may distribute such copies to members of Local 385.

The campaign material which is to be prepared by Messrs. Peterson and Ferenac and given by them to Local 385 shall be no greater in length than two (2) pages, each 8½ by 11 inches, printed on only one side, shall contain no pictures and shall be suitable for xerographic reproduction. A copy of the materials submitted by Messrs. Peterson and Ferenac to Local 385 shall be provided by them simultaneously to the Election Officer. Local Union 385 shall within three (3) days of duplicating and distributing the material, as provided above, file an affidavit with the Election Officer demonstrating its compliance with the requirements of this decision.

II. Campaign Activities at the Local Union Hall and During Local Union Meetings

The last Local Union meeting of Local Union 385 was conducted on September 21, 1991. At that meeting campaign literature was distributed. Not only was the letter written by Messrs. Parker and Thornton and described above distributed, but in addition a R. V. Durham Unity Team Fundraiser and Rally invitation was also handed out by Local 385 members.¹

A portion of the meeting was devoted to Convention reports. During this portion of the meeting, issues regarding the propriety of the "Local 385 Convention Bulletin" and the responsive letter by Messrs. Parker and Thornton were apparently aired. A lengthy discussion ensued. Thereafter, several members rose and suggested that campaign issues should not be a subject of debate at membership meetings. Mr. Parker suggested that the Local Union office and property should be "neutral ground" with no distribution of campaign literature allowed. Mr. Parker made a motion to that effect which was subsequently passed.

Article VIII, §10(d) of the *Rules* prohibits restricting members' pre-existing rights to engage in campaign activities, to solicit support, distribute leaflets or literature and the like on Union premises. Pre-existing rights are rights afforded the membership under

¹ The Election Officer's investigation determined that the Fundraiser and Rally invitation was prepared, duplicated and distributed without the utilization of any Union funds. The costs of the preparation and duplication were borne by Mr. Parker. The invitation was distributed by Local 385 members on their own time, not on time that was paid for either by the Union or any other employer.

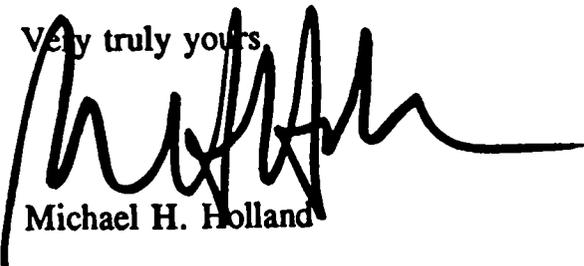
Paul A. Nowlin
October 10, 1991
Page 4

substantive law or rights which the members have previously enjoyed as a matter of past practice. With respect to Local 385 it is clear -- from the conduct and content of the Local's September 21, 1991 meeting alone -- that the membership has had the right to engage in campaign activity and to discuss campaign issues during Local Union meetings. Since the Local's members have such pre-existing rights, the Local may not now restrict such rights, even if such restriction is desired by a majority of the Local's membership. *Rules, Article VIII, §10(d).*

The protest is GRANTED. Local 385 is ordered to refrain from enforcing or seeking to enforce a prohibition preventing Local Union members from distributing campaign literature with respect to the 1991 IBT International Union officer election on Union property and at Local Union meetings or from engaging in discussions of campaign issues with respect to the 1991 IBT International Union officer election at Local Union meetings. Nothing shall prevent the Local from enforcing reasonable rules of decorum with respect either to literature distribution or the business portion of its meetings. The presiding officer at the next meeting of Local Union 385 shall announce to the members that the motion passed at the September 21, 1991 meeting making the Union hall and property "neutral ground" shall not be enforced with respect to the 1991 IBT International Union officer election. Local Union 385 shall within three (3) days of that meeting file an affidavit with the Election Officer demonstrating that it has complied with this portion of the 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

MHH/ca

Paul A. Nowlin
October 10, 1991
Page 5

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