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October 14, 1991

**VIA UPS OVERNIGHT**

Phil Gebow  
P.O. Box 744  
Bantam, CT 06570

Perley Rossignol  
Secretary-Treasurer  
IBT Local Union 677  
1871 Baldwin St.  
Waterbury, CT 06706

Gene Moriarty  
41 Pine St.  
Watertown, CT 06795

**Re: Election Office Case No. P-963-LU677-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 Phil Gebow, a member of Local 677. Mr. Gebow alleges that at the Local 677 general membership meeting held on September 15, 1991, a resolution was passed in support of R.V. Durham for IBT General President. Mr. Gebow contends that the endorsement by the Local of a candidate for International Union office on the basis of a vote taken among 200 of the Local's 3,000 members violates the *Rules*.

This protest was investigated by Regional Coordinator Elizabeth Rodgers. Mr. Gebow was not present at the September 15, 1991 Union meeting. He was told by another Local member on October 6, 1991 of the actions which took place at that meeting, including the resolution passed in support of R. V. Durham. Mr. Gebow then filed a protest with the Election Officer. The protest is timely. See Election Office Case No. P-822-IBT, affirmed 91-Elec. App.-198.

At the September 15, 1991 Local Union meeting, a motion was made by a member from the floor and passed by a majority vote of those members present to endorse the R. V. Durham Unity Team slate. A week prior to the September 15, 1991 meeting, the Local 677 executive board also voted to support the R. V. Durham Unity Team slate, as did the retirees' executive board. Both votes were reported to the membership at the September Union meeting. After the retirees' executive board and the Local executive board actions were reported at the general membership meeting, a Local member made the motion, subsequently passed, that the membership of Local 677 vote to support the R. V. Durham Unity Team slate.

The Union contends that Article VIII, § 10 of the *Rules* provides that all Union members retain the right to openly support any candidate for International Union office, and thus neither the Local membership nor the executive board can be restricted from exercising those rights to endorse or solicit support for candidates.

The Local is correct in stating that all IBT members, including IBT members who hold office in the IBT or any subordinate body of the IBT, are entitled to participate in election campaign activities, including the right to support candidates of their choice and to make candidate endorsements. *Rules*, Article VIII, §§ 10(a) and 10(b). However, in accordance with the *Rules*, IBT entities, including Local Unions and Local Union executive boards, cannot as an entity endorse or support a particular candidate or slate of candidates. An endorsement is a contribution of something of value to a candidate or a candidate's campaign. See, e.g., Election Office Case No. P-651-IBT, affirmed 91-Elec. App.-183 (SA).

Since neither the IBT nor any subordinate body of the IBT may make contributions to any candidate for International office, *Rules*, Article X, §§ 1(b)(1) and (1)(b)(3), no IBT entity as an entity may endorse any candidate. Similarly, the Local Union executive board may not as the executive board of the Local endorse any candidate or slate of candidates. Neither may an auxiliary organization financed through Union funds, such as the Local 677 retiree organization, endorse as an entity any candidate or slate of candidates for International office. Election Office Case No. P-917-LU730-MID.

Accordingly, it was inappropriate for the Local Union 677 membership to be informed that the executive board of Local 677 and the retiree executive board, both as executive boards of Union or Union-financed entities, endorsed any candidate or slate of candidates. It was also inappropriate for the Local as an entity to endorse any candidate or slate of candidate, and accordingly inappropriate for a motion to that effect to be found in order and voted upon at a Local Union meeting.

To clarify any confusion that may have resulted from these inappropriate actions taken at the September 15, 1991 Local Union 677 meeting, the officer having responsibility of chairing the Local Union meetings, shall read the following to the members at the next Local 677 membership meeting:

At last month's Local Union membership meeting, the minutes of the Local's executive board meeting, reflecting that the Local's executive board had endorsed the R. V. Durham Unity Team slate members was read. Similarly, the minutes of the retiree executive board meeting also reflecting that the retiree executive board had endorsed the R. V.

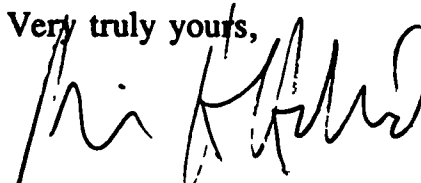
Durham Unity Team slate members was read. In addition, a motion was made, voted upon and passed by the majority of the members present at that meeting to endorse the R. V. Durham Unity Team slate members. Neither the Local's executive board, the retiree executive board nor the Local as an entity may endorse any candidate or slate of candidates competing in the 1991 IBT International Union officer election. While the individual members of the Local's executive board, the retiree executive board or of this Local may endorse, and may have endorsed, a particular candidate or slate of candidates, the executive board as the executive board of the Local, the retiree executive board as the executive board of a Union financed auxiliary body, and the Local Union acting as the Local Union cannot endorse any candidate or slate of candidates.

Within five days of the next Local Union membership meeting of Local 677, the Local shall file an affidavit with the Election Officer demonstrating that the above was duly read to the members at such meeting.

This protest is decided in accordance with the foregoing.

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

**Phil Gebow**  
**Page 4**

**cc: Frederick B. Lacey, Independent Administrator**  
**Elizabeth A. Rodgers, Regional Coordinator**

**Ron Carey**  
**c/o Richard Gilberg, Esquire**  
**Cohen, Weiss & Simon**  
**330 West 42nd Street**  
**New York, NY 10036-6901**

**R. V. Durham**  
**c/o Hugh J. Beins, Esquire**  
**Beins, Axelrod, Osborne**  
**& Mooney**  
**2033 K St., NW**  
**Suite 300**  
**Washington, D.C. 20006-1002**

**Walter Shea**  
**c/o Robert Baptiste, Esquire**  
**Baptiste & Wilder**  
**1919 Pennsylvania Avenue, N.W.**  
**Suite 505**  
**Washington, D.C. 20006**

**MHH/cb**

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IN RE:	:	91 - Elec. App. - 212 (SA)
PHIL GEBOW	:	
and	:	DECISION OF THE
IBT LOCAL UNION NO. 677	:	INDEPENDENT ADMINISTRATOR

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This matter arises as an appeal of the Election Officer's decision in Case No. P-963-LU677-ENG. A hearing was held before me by way of teleconference at which the following persons were heard: John J. Sullivan and Barbara Hillman for the Election Officer; Hugh Beins for the Durham Unity Team; Sophia Davis for the Committee to Elect Ron Carey; and Norman Zolot for Local Union 677. The Election Officer submitted a written Summary in accordance with Article XI, Section 1.a.(7) of the Rules For The IBT International Union Delegate And Officer Election (the "Election Rules"). Local 677 also made a written submission.

In this matter, the Election Officer determined that Local 677 violated the Election Rules by endorsing the R.V. Durham Unity Team Slate (the "Durham Slate") for International Officer positions. Specifically, the Election Officer found that Local 677's General Executive Board endorsed the Durham Slate and a vote to adopt that endorsement was subsequently taken at a September 15, 1991, general

membership meeting attended by 200 of the Local's approximately 3000 members. In addition the Executive Board of Local 677's retirees<sup>1</sup> voted to make the same endorsement.

The issue to be resolved here is whether or not a Local IBT Union may endorse a candidate for International office without violating the Election Rules.<sup>2</sup> The Election Officer found such an endorsement to violate Article X, Section 1.b.(1) of the Election Rules. That provision prevents campaign contributions by a "labor organization."<sup>3</sup> See also, Election Rules, Article X, Section 1.b.(3) ("No Union funds or goods shall be used to promote the candidacy of any individual."); Article VIII, Section 10.c. (Union

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<sup>1</sup> The Local's board of retirees consists of former IBT members who are no longer part of the Local or any other IBT-affiliated entity and who are not eligible to vote in any election.

<sup>2</sup> Local 677 also challenges the timeliness of the complaint, alleging that it was not made within the time limits set forth in the Election Rules. Article XI, Section 1.a.(1) ("Protests . . . must be filed within forty-eight (48) hours or such protests shall be waived.") The Local highlights the fact that the meeting in question took place on September 15, and the protest was dated October 8. As the Election Officer noted, however, the Complainant was not himself present at the meeting and did not acquire actual knowledge of the events until later. There is no indication that the Complainant failed to act in a timely manner upon his learning of what transpired at the meeting. See In Re: Scott, 91 - Elec. App. - 198 (SA) (October 9, 1991) (Protest considered timely despite the fact that Complainant did not learn of violations until approximately one month later).

<sup>3</sup> Although the Election Rules do not define the term "labor organization," it is uncontested that a Local Union is indeed a "labor organization." See, e.g., 29 U.S.C. §402(a) ("'Labor organization' means . . . any group . . . in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment . . .").

funds and facilities may not be used to assist a candidate's campaign unless such funds and facilities are made equally available to all candidates).

At the hearing before me and in its written submission, Local 677 argued that an endorsement is not expressly forbidden by the Election Rules and that, in any event, an endorsement is not a campaign contribution because it is intangible.

These arguments ignore the fact that the Election Rules do not require that a campaign contribution be a tangible item. The Election Rules define "campaign contribution" broadly as "any direct or indirect contribution where the purpose object or foreseeable effect of that contribution is to influence the election of a candidate." Election Rules, Definition (6) at A-2. See, e.g., In Re: Durham Unity Team, 91 - Elec. App. - 183 (SA) (September 17, 1991) (lending one's name to a fund raising effort is the contribution of something of value). See also In Re: Christopher Scott, 91 - Elec. App. - 198 (SA) (October 9, 1991) (favorable reference to IBT candidate in fund raising letter was an impermissible campaign contribution); In Re: Farkas, 91-Elec. App.-210 (SA) (October 24, 1991) (negative comments regarding opposition candidates at general membership meeting considered impermissible campaigning under the circumstances).

Moreover, it simply does not matter that an "endorsement" is not specifically listed in the Election Rules as a contribution. The Election Rules do not purport to list the entire universe of



things that may constitute contributions. The Election Rules' definition of "campaign contribution" is deliberately broad. Bearing in mind the Election Rules' liberal definition, and consistent with earlier decisions on this issue, it is clear that the endorsement here was something of value which purpose, object and foreseeable effect was to influence the election of Durham and his Slate. In fact, the endorsement can be viewed as nothing less than an overt contribution.

It must be emphasized that prohibiting a Local Union from making an endorsement does not infringe any individual member's right to free political expression. The Election Rules are clear on this point. See Election Rules, Article VIII, Section 10.a. ("All Union members retain the right to participate in campaign activities . . ."). Accord 29 U.S.C. §411 ("Bill of Rights of Members of Labor Organizations").<sup>4</sup> The guarantee to exercise political rights is afforded to union members (including Union Officers) acting as individuals, not to the Local or its Executive Board, as an institution or collective entity. The protection of the individual Local Union members' rights to free political expressions is not served by permitting an incumbent leadership to

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<sup>4</sup> It was suggested that Local 677 has a right under the United States Constitution to make political endorsements. Even assuming, for purposes of analysis, that the Court-appointed officers are State actors who could implicate the United States Constitution, the goal of fair, honest and open elections is a compelling State interest and reasonable restrictions on contributions are permissible notwithstanding that they may impact free speech. See In Re: Christopher Scott, 91 - Elec. App. - 198 (SA) (October 9, 1991), and the cases cited therein at pp. 7-8.

solicit an endorsement from 200 of approximately 3000 IBT members and representing it as the Local's official position.

As a final matter, it is argued that the retiree board is free to make endorsements because the board consists of non-IBT members who receive no funding from the Local or any other Union-affiliated source. In his Summary, the Election Officer suggested that the retiree board was financed, "at least in part through Union funds." When pressed at the hearing, however, the Election Officer was unable to refute the Local's unequivocal statement to the contrary. Accordingly, I find that the Election Officer's decision regarding the retiree board cannot be sustained. This is especially so given that the only articulable basis for that decision is the apparent mistaken conclusion that the retiree board is financed in part by Union funds.<sup>5</sup> Accordingly, all references to the retiree board in the remedial statement that the Election Officer ordered be read at the next general membership meeting must be stricken.

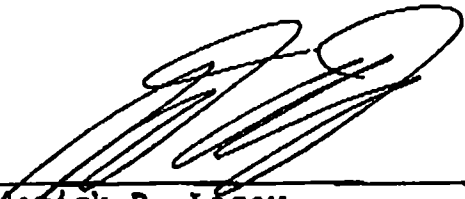
The Committee to Elect Ron Carey argued that the remedial statement must be further modified to include a clear retraction of the Durham endorsement. I agree that this should be done. Thus, the following sentence must be added to the end of the statement:

Accordingly, the Local and its Executive Board retracts its endorsement of R.V. Durham and his Unity Team Slate.

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<sup>5</sup> In this connection the Local also highlights that the retiree board does "not employ anyone." Thus, it would not be precluded from making a contribution as an employer. See Election Rules, Article X, Section 1.b.

For the foregoing reasons, the Election Officer's decision is affirmed as modified herein.



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

Dated: October 28, 1991