

OFFICE OF THE ELECTION OFFICER
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439/CCV

Michael H. Holland
Election Officer

November 13, 1991

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VIA UPS OVERNIGHT

Carla Viramontes
1333 Todd Street
Manteca, California 95336

Pat Miraglio
Secretary-Treasurer
IBT Local Union 439
1531 East Fremont
Stockton, CA 95201

Re: Election Office Case No. P-1021-LU439-CCV

Dear Ms. Viramontes and Mr. Miraglio:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Carla Viramontes, Local 439's Recording Secretary and a delegate to the 1991 IBT International Union Convention from Local Union 439. She protests the action of Local 439's Secretary-Treasurer, Pat Miraglio, in initiating internal Union charges against her for "violating her oath of office" and with "misuse of union funds" at the IBT Convention in Orlando, Florida. The basis of these internal charges is Ms. Viramontes' alleged failure to document all of her Convention-related expenditures. These internal Union charges are scheduled to be heard by the Executive Board of Local 439 on November 16, 1991. This protest was investigated by Regional Coordinator Don Twohey.

The details concerning the manner in which Local 439 interpreted the *Rules*, the Election Officer's Advisory On Convention Expenses, issued April 19, 1991 ("*Advisory*"), and the manner in which Carla Viramontes complied with Local 439's directives concerning her Convention-related expenses are convoluted and disputed. Local 439 did not comply with the Election Officer's recommendation to advance delegates \$130 per day for expenses and instead advanced its four delegates a total of \$100 apiece for the entirety of the Convention; whether the delegates agreed to this reduced expense advance is disputed.

One question which Local 439 and Carla Viramontes wrestled with after the Convention was whether Carla Viramontes properly documented her use of this \$100 advance. Carla Viramontes submitted receipts to document her expenses, some of which were rejected by Local 439 as improper expenses. Ultimately, Carla Viramontes reimbursed Local 439 in the amount of \$24.86 even though she disputed Local 439's analysis of her receipts. Although Local 439 paid Carla Viramontes's entire hotel bill

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directly, its Secretary-Treasurer Pat Miraglio apparently felt that some of the expenses--such as "servibar" charges--were improper.

One salient point is undisputed: there are no outstanding claims for reimbursement by Local 439 against Carla Viramontes, and Carla Viramontes has abandoned any claims against Local 439 for payment of additional expenses. Most importantly, no one filed a protest with the Election Office concerning noncompliance with the *Rules* and/or the Election Officer's Advisory.

Rather than file a protest with the Election Officer to resolve the merits of any Convention expense issues, Local 439's Secretary-Treasurer Miraglio told Carla Viramontes that she was no longer trusted, asked her to resign her position as Local 439's Recording Secretary and, when she refused, filed internal Union charges against her. When questioned by the Regional Coordinator as to why he did not file a protest, Mr. Miraglio stated that the Election Officer might well deny the protest and, in that event, would not reach the issue of Carla Viramontes's alleged lack of trustworthiness.

The Election Officer concludes that Mr. Miraglio is attempting to circumvent the Election Officer's jurisdiction to resolve disputes concerning the application of the *Rules* and the Advisory. While internal Union charges concerning issues which do not affect or implicate the application of the *Rules* or Advisories are not normally within the Election Officer's jurisdiction, in this case, internal Union charges are being used to resolve a dispute which directly implicates the 1991 IBT International Union officer election over which the Election Officer has plenary jurisdiction; in this case internal Union charges are being used to resolve a dispute concerning the mandate of Article II, §10(d) of the *Rules*--requiring that all Local Unions pay the expenses of its delegates to attend the 1991 IBT Convention--as further detailed in the Advisory. Whether or not Carla Viramontes complied with the Election Officer's Advisory is precisely the issue which Mr. Miraglio intends to have Local 439's Executive Board, rather than the Election Officer, resolve. Local 439's Executive Board is not an appropriate forum for resolution of this Convention expenses issue; and internal union charges are not the appropriate procedural route to litigate this issue.

The Advisory requested Local Union and delegates to "cooperate with one another to effectuate the reimbursement of reasonable expenses . . . as smoothly and expeditiously as possible." The Advisory expressly offered the services of the Election Officer to answer questions. The Election Officer has responded to numerous inquiries about Convention expenses. In addition, a number of protests concerning Convention expenses were filed and resolved both before and shortly after the Convention. The Election Officer cannot under the terms of his appointment by the United States District Court, and thus will not, countenance this effort to supplant his processes for resolution

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of Convention expense issues and to replace his decision-making process with the Executive Board of Local 439.

For these reasons, the Election Officer GRANTS this protest and directs Mr. Miraglio and the officers of Local 439 to withdraw with prejudice the internal Union charges filed against Ms. Viramontes concerning the legitimacy of her Convention expenses. If the Local continues to have concerns concerning the legitimacy of Ms. Viramontes' expenses or believes that action should be taken against her regarding expenses for which she was reimbursed by Local 439, a protest may be filed by Local Union 439 with the Election Officer.

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

cc: Frederick B. Lacey, Independent Administrator
Donald E. Twohey, Regional Coordinator

IN RE:	:	91 - Elec. App. - 229 (SA)
	:	
CARLA VIRAMONTES	:	
	:	
and	:	DECISION OF THE
	:	INDEPENDENT ADMINISTRATOR
IBT LOCAL UNION NO. 439	:	

This matter arises as an appeal from the Election Officer's decision in Case No. P-1021-LU439-CCV. 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; Duane Beeson for Local Union 439; and Pat Miraglio, the Secretary-Treasurer of Local Union 439. In addition, the Election Officer also provided 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").

In this matter, Carla Viramontes, the Recording Secretary for Local Union 439, charges that her Local has improperly filed internal Local Union disciplinary charges as a means of challenging certain of her IBT Convention expenses. In granting this protest, the Election Officer found that Local Union 439 improperly bypassed the protest procedure mandated by the Election Rules and had thereby usurped the Election Officer's authority. The Election Officer concluded that all issues relating to the propriety of

any challenge regarding Ms. Viramontes' Convention expenses under the protest procedure set forth in the Election Rules. See Election Rules, Article XI, Section 1.

At the hearing before me, Local 439 acknowledged that the Election Officer had "exclusive jurisdiction" over matters pertaining to Convention expenses. However, Local 439 asserted that it retained the authority to discipline its members for violating their oath as IBT members. ~~Thus, it was argued that~~

~~the Election Officer find that some of Ms. Viramontes' expenses were improperly claimed. Local 439 could then pursue its own internal disciplinary charges.~~

I agree with the Local. If anything, the work of the Court-appointed officers, and the Consent Order under which they operate, encourages Local Unions to initiate disciplinary action wherever it is justified and appropriate to weed out corruption within the Union.


~~Thus, it is clear that Local 439 should be free to pursue whatever disciplinary action it deems appropriate if the Election Officer ultimately determines that certain of Ms. Viramontes' claimed Convention expenses need not be paid by the Local. This~~

¹ The Election Officer may, of course, assert jurisdiction over intra-Union disciplinary matters in the proper case. For example, the Election Officer would retain full authority to investigate and remedy any situation where it is alleged that Local 439 imposed discipline against Ms. Viramontes in retaliation for her participation in the Convention or her other involvement in the International officer election. In other words, the Local can not retaliate against Ms. Viramontes for activity protected under the (continued...)

must be so because the Election Officer, in determining the propriety of the Convention expenses, will not reach the issue of whether Ms. Viramontes has violated her oath of office or misused any union funds.

Therefore, the Election Officer's remedy is modified insofar as the Local's charges shall be withdrawn without prejudice. This would permit the Local to pursue, in good faith, any violations of its internal rules that may have been involved in the Viramontes claiming expenses to which she was not entitled,²

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



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

Dated: November 21, 1991

¹(...continued)

Election Rules. Thus, any disciplinary action taken by a Local Union in retaliation for a member's campaign activities would be squarely within the Election Officer's grant of jurisdiction under the Election Rules. See, e.g., In Re: Veltry, 91 - Elec. App. - 228 (SA) (November 14, 1991).

² This is not to suggest, in any way, that a finding by the Election Officer that the Local need not pay certain of Ms. Viramontes' expenses, necessarily leads to the conclusion that Ms. Viramontes acted to defraud the Local. Ms. Viramontes may have claimed certain expenses, to which she was not entitled, in good faith.