

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) 624-8792

April 23, 1991

VIA UPS OVERNIGHT

Mike Campanella
c/o The Rank & File
Ticket Slate
P O Box 185
West Chester, OH 45069

Jack C. Weber
c/o The United Team Slate
Secretary-Treasurer
Teamsters Local 100
2100 Oak Rd
Cincinnati, OH 45241

James A. Beck
c/o The Unified Members Slate
3548 Turkeyfoot Rd
Erlanger, KY 41018

Re: Election Office Case No. Post-57-LU100-SCE

Gentlemen

This post-election protest was filed by Mike Campanella pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") Mr. Campanella, an unsuccessful candidate for delegate in the Local 100 delegate and alternate election, makes two allegations in his protest. He alleges that (1) a lawsuit was filed against him by Anthony Hooks and James Beck, both successful candidates for delegate, and (2) these same members passed out untruthful information about himself and others on his Rank and File slate. He asks that the delegate election at Local 100 not be certified.

This protest is a post-election protest. Therefore, it cannot be considered or remedied unless the alleged violation may have affected the results of the election. *Rules*, Article XI § 1(b)(2). For a violation of the *Rules* to be considered to have affected the results of the election, there must be a reasonable probability that the outcome of the election may have been affected by the violation. Wirtz v Local Unions 410, 410A, 410B & 410C, International Union of Operating Engineers, 366 F.2d 438.

(2nd Cir 1966) To determine whether an effect exists the Election Officer determines whether the effect was sufficient in scope to affect the outcome of the election and/or whether there is a causal connection between the violation and the results or outcome of the election Dole v. Mailhandlers, Local 317 132 LRRM 2299 (D C M D Alabama 1989)

Local 100 conducted its delegate election by mail ballot the votes were counted on March 25 1991 The Local elected 7 delegates and 4 alternates

The tally for the election was as follows

Delegate Candidates

Tony Hooks	(Unified Members Slate)	748
James Beck	(Unified Members Slate)	744
Thomas Breeden	(Unified Members Slate)	728
Thomas McCarthy	(Unified Members Slate)	675
Ronald Bowman	(Unified Members Slate)	662
William Wright	(Unified Members Slate)	662
Al Walker	(Unified Members Slate)	655
Mike Dickens	(United Team Slate)	553
Jack Weber	(United Team Slate)	518
Cliff Patterson	(Rank & File Slate)	497
Duane Wilson	(United Team Slate)	473
Blaine Johnson	(Rank & File Slate)	467
Troy Stapleton	(Rank & File Slate)	459
Art Green	(United Team Slate)	452
Jimmy Meyer	(Rank & File Slate)	431
Mike Campanella	(Rank & File Slate)	406
Dave Minix	(United Team Slate)	396
Richard Baker	(United Team Slate)	385
Ron Milton	(United Team Slate)	374
Freddie Kells	(Rank & File Slate)	348
Mike Williams	(Rank & File Slate)	318
Donald Stay	(Independent)	142

Alternate Delegate Candidates

Vincent Lasita	(Unified Members Slate)	892
James D Andrea	(Unified Members Slate)	725
Homer Mann	(Unified Members Slate)	695
Thomas Koop	(Unified Members Slate)	683
Joe Wilburn	(Rank & File Slate)	513
Herschel Kent	(United Team Slate)	451

Howard Ryan	(United Team Slate)	439
Ron Francisco	(Rank & File Slate)	418
Jack Martin	(Rank & File Slate)	350
Tim Behrens	(Rank & File Slate)	317
Joel Crowey	(Independent)	183

Messrs Hooks and Beck and all other delegate and alternate delegate candidates on their slate, the Unified Members Slate, were the successful candidates. The margin between the Unified Members Slate delegate candidate with the fewest number of votes, Al Walker with 655 votes, and the losing delegate candidate with the highest number of votes, Mike Dickens, a candidate on the United Team Slate with 553 votes, was 102 votes. The margin between Mr Walker and the candidate on Mr Campanella's slate, the Rank and File Slate, with the highest number of votes, Cliff Patterson, was 158 votes. 249 votes separated Mr Campanella from Mr Walker. Since Mr Hooks and Mr Beck received 748 and 744 votes, respectively, Mr. Campanella received 342 less votes than Mr Hooks and 338 votes less than Mr Beck.

In an earlier pre-election protest, P-003-LU100-SCE, Mr Hooks had protested that Mr Campanella was publishing false and slanderous statements about himself and Mr Beck. By decision dated October 2, 1990, the Election Officer found that the protest was not well founded, on the basis that even if the campaign literature contained purportedly false, or even profane, information, it would not remove it from the protection of the Rules National Association of Letter Carriers v. Austin, 418 U S 264 (1974) (uninhibited and robust debate encouraged in labor matters, even allegedly defamatory statements permitted), Salzhandler v. Caputo, 316 F.2d 445 (2nd Cir 1963) (statements critical of Union officials, even if incorrect, protected).

Thereafter, as found by the Election Officer's investigation, on February 4, 1991, Mr. Campanella received a letter from Arnold Morelli, as attorney for Messrs Hooks and Beck, which stated that "you must cease and desist immediately from issuing those false and defamatory statements," which were the subject of Messrs Hooks' and Beck's prior protest to the Election Officer in P-003-LU100-SCE. The letter further stated that "if Mr Campanella did not do so, then Mr Hooks and Mr Beck will resort to the appropriate legal proceeding without consulting you any further. This will include seeking from you all of the above damage concepts and attorneys' fees."

A lawsuit was filed against Mr Campanella by Messrs Beck and Hooks in the Court of Common Pleas, Hamilton County, Ohio, Case No A9101877 on February 28, 1991. Mr Campanella received notice that the lawsuit was filed in mid-March, 1991.

The lawsuit alleges that Campanella "engaged in a systematic and continuous campaign intentionally, recklessly, willfully and maliciously to slander, libel and defame the name and personal and business reputation of Hooks and Beck." The complaint goes on to contend that "these statements as part and parcel of Campanella's campaign

~~and were intended to prevent Hooks and Beck from being elected as delegates to the IBT Convention, and also to prevent them from being re-elected as Officers of Local 100 of the IBT~~ It was further alleged that "as a direct approximate result of Mr. Campanella's conduct in this regard, Hooks and Beck have, in fact, suffered extreme public embarrassment, humiliation, shame, and severe emotional stress, as well as injury to their personal and business reputations " The complaint asks that the Court award both compensatory and punitive damages against Mr. Campanella.

Mr. Campanella alleges that the cover page of the complaint was posted by the Unified Members Slate on many bulletin boards, and that this posting adversely affected his campaign and thus may have affected the outcome of the election. Mr. Campanella does not contend that the filing of the lawsuit affected his candidacy in any other manner.

For the very reasons that the Election Officer denied the protest against Mr. Campanella in P-003-LU100-SEC, the Election Officer finds that the posting of the first page of the lawsuit does not violate the *Rules*, even assuming, as alleged by Mr. Campanella, that the complaint is untruthful. Similarly, neither Mr. Beck nor Mr. Hooks nor the other members and supporters of their slate violated the *Rules* by distributing the literature about which Mr. Campanella also complains in the second allegation of his post-election protest.

The model for free and fair Union elections is that of partisan political elections. In those elections, contestants are generally allowed to make whatever assertions, allegations, statements of opinion or even of alleged facts without legal sanctions for their truth or falseness. The cardinal principle is that the best remedy for untrue speech is more free speech, with the electorate being the final arbiter. As long as the literature in question did not purport to be the official voice of the organization, as opposed to being the opinions of the candidates who may be officers, inquiry will not generally be made as to its truth or falseness. A review of the campaign literature in question clearly establishes that the literature does not purport to be the official voice of the Local Union and is identified as the literature of the Unified Members Slate.

Thus, the fact that campaign statements are allegedly false, irrelevant or even defamatory does not remove them from the protection of the *Rules*. National Association of Letter Carriers v. Austin, 418 U S 264 (1974) (uninhibited and robust debate encouraged in labor matters, even allegedly defamatory statements permitted), Salzhandler v. Caputo, 316 F 2d 445 (2nd Cir 1963) (statements critical of Union officials, even if incorrect, protected). The policy of encouraging robust debate in the selection of delegates of the IBT is reflected in the *Rules*' prohibition of censorship of campaign literature. *Rules*, Article VII, § 6 (g). Thus, the campaign literature distributed by the Unified Members Slate does not violate the *Rules* nor does that they posted the front page of an allegedly untrue lawsuit violate the *Rules*.

With respect to the lawsuit, Mr. Campanella does not allege, and the Election Office does not find, that its filing affected his candidacy or campaign. Mr. Campanella only objects to the posting of the first page of the complaint on bulletin boards. As indicated above, however, the posting of allegedly defamatory material does not constitute a violation of the *Rules*

Further, with respect to the lawsuit, Mr. Campanella had notice that it might be filed as early as February 4, 1991, the date of Mr. Morelli's letter to him. He received notice that the lawsuit was filed in mid-March, 1991. However, no protest was filed until March 28, 1991. The protest cannot be considered timely. In re Barclay, 91-Elec App 111.

For the foregoing reasons this protest is DENIED.¹

¹In the case of Bill Johnson's Restaurants v. NLRB 461 US 731 (1983), the United States Supreme Court was confronted with the issue of whether the National Labor Relations Board (NLRB) could enjoin, as a violation of an employee's federally guaranteed rights, the filing of a state court lawsuit seeking damages allegedly caused by the employee's exercise of those rights, in that case, the use of picket signs containing allegedly libelous statements. The Court held that the NLRB could enjoin such lawsuits, and award appropriate remedies, if it was found that the lawsuit was filed solely to discourage the exercise of the federally guaranteed rights, and was also lacking any basis in fact or in law. Otherwise, the NLRB could not issue any determination until the state court proceeding had concluded, then the remedy of the NLRB, if any, would be based on the outcome of that state court proceeding.

Since it has been determined in this case that the filing of the lawsuit did not affect the outcome of this delegate and alternate delegate election, the Election Officer has not determined whether or not the lawsuit was filed with the intention to chill Mr. Campanella's rights under the *Rules* and whether, if so, the lawsuit states a valid cause of action, has any basis in fact or law for contending that libel was committed by Mr. Campanella.

~~It is further noted, however, that the allegations of the complaint, which is the subject of this protest, state that the alleged libel and slander arose in connection with a campaign for the election of delegates and alternate delegates to the 1991 IBT International Convention. Thus, the lawsuit implicates the IBT International Union delegate election process as described in the Consent Order of March 14, 1989 entered in the matter of United States v. International Brotherhood of Teamsters et al, 88 Civ 4486 (DNE), and the *Rules* approved by the Court on July 10, 1990~~

The United States District Court has held, pursuant to the All Writs Act, that all litigation implicating the 1991 IBT International Union delegate or officer nomination and election process lay exclusively within the jurisdiction of such court, and was to be filed, if at all, in the United States District Court for the Southern District of New York, Judge David N. Edelstein presiding. United States of America v. International Brotherhood of Teamsters 728 F Supp 1032 (SDNY 1990), affirmed 907 F 2d 277 (2nd

Mike Campanella
Page 6

Very truly yours,



Michael H Holland

MHH/mjv

cc Frederick B Lacey, Independent Administrator
Peggy A Hillman, Regional Coordinator

Cir 1990) Thus, the filing of a lawsuit, such as the one at issue here, in a jurisdiction other than the United States District Court for the Southern District of New York, may constitute contempt of such court's All Writs Act decision, as affirmed by the United States Court of Appeals for the Second Circuit. Therefore, the Election Officer has referred this protest to the United States Attorney for the Southern District of New York, with the request that this matter be reviewed for a determination as to whether a motion for contempt should be pursued by him

In an earlier pre-election protest, Mr. Hooks had protested that Mr. Campanella was publishing, in campaign material, false and slanderous statements about himself and Mr. Beck. In a decision dated October 2, 1990 the Election Officer found no merit to Mr. Hooks protest.

Thereafter, Messrs. Hooks and Beck filed a lawsuit in the Court of Common Pleas, Hamilton County, Ohio, Case No. A901877 (sometimes referred to herein as the "State Court action"). The suit alleges, inter alia, defamation. The complaint states that "the statements as part and parcel of Campanella's campaign were intended to prevent Hooks and Beck from being elected as delegates to the IBT Convention, and also to prevent them from being re-elected as Officers of Local 100 of the IBT." The complaint seeks compensatory and punitive damages against Mr. Campanella.

In a post-election protest Mr. Campanella alleged that the cover page of the complaint was posted by the Unified Member Slate, and that this posting had adversely affected his campaign and thus may have affected the outcome of the election. The Election Officer found that the posting of the first page of the complaint did not violate the Rules for the IBT International Union Delegate and Officer Election (the "Election Rules"). The Election Officer also found that neither Mr. Beck, Mr. Hooks nor the other members and supporters of their slate violated the Election Rules by distributing literature which allegedly contained untrue information about Mr. Campanella and other members of his slate.

Accordingly, Mr. Campanella's post-election protest was denied. Mr. Campanella did not appeal that ruling; instead, Messrs. Hooks and Beck filed an appeal.

In appealing this matter Messrs. Hooks and Beck do not quarrel with the Election Officer's decision on the merits; rather they take issue with a footnote found at pp. 5-6 of the Election Officer's decision. In that footnote the Election Officer states:

Thus, the filing of a lawsuit, such as the one at issue here, in a jurisdiction other than the United States District Court for the Southern District of New York, may constitute contempt of such Court's All Writs Act decision, as affirmed by the United States Court Of Appeals For The Second Circuit.

The All Writs Act decision referred to in the Election Officer's footnote is reported at United States of America the International Brotherhood of Teamsters, 728 F.Supp. 1032 (S.D.N.Y. 1990), aff'd, 907 F.2d 277 (2d Cir. 1990). As explained by United States District Court Judge David N. Edelstein at 728 F.Supp. 1036:

The government, in sum, seeks to have this Court enjoin all lawsuits which seek to litigate issues arising under the Consent Decree filed in any forum other than the Southern District of New York. This request would serve the purpose of channeling all such litigation to this forum.

Judge Edelstein granted the Government's request.

Concerned that the State Court action may implicate the Consent Order, the Election Officer referred the matter to the United States Attorney for the Southern District of New York, with a request that the matter be reviewed for a determination as to whether a motion for contempt should be pursued.

Messrs. Hooks and Beck, through their attorney, argued extensively at the hearing before me that their State Court action in no way implicates the Consent Order and does not run afoul of Judge Edelstein's All Writs Act decision. The Election Officer, in his Summary, argued extensively that the State Court action did in fact touch upon the Consent Order and by necessary implication fell under the All Writs Act decision.


To decide this appeal, I need not resolve the question of whether the State Court action violates the All Writs Act decision. The decision of whether the Consent Order is implicated and whether the All Writs Act is violated is properly left to the United States Attorney. Accordingly, the Election Officer acted properly in referring the matter to the United States Attorney. In fact, not only did the Election Officer act appropriately, but given his obligation as a Court-appointed officer it appears that the Election Officer had no other choice but to refer the matter the United States Attorney.

It is clear that a question exists whether the State Court action implicates the Consent Order as the statements in question were made in the course of the supervised delegate and alternate delegate election.

In affirming the Election Officer's ruling I am not recommending any course of conduct for the United States Attorney. I am confident that the United States Attorney will examine the

matter and make an independent determination as to whether Messrs. Hooks and Beck are in violation of the All Writs Act decision.

Accordingly, the decision of the Election Officer to refer this matter to the United States Attorney was proper and will not be disturbed.



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

Dated: May 7, 1991