

December 5, 1995

**VIA UPS OVERNIGHT**

James A. Beck  
3548 Turkeyfoot Road  
Erlanger, KY 41018

Vince Lasita, Secretary-Treasurer  
Teamsters Local Union 100  
2100 Oak Road  
Cincinnati, OH 45241

General Executive Board  
International Brotherhood of Teamsters  
25 Louisiana Avenue, N.W.  
Washington, DC 20001

John Sullivan  
Associate General Counsel  
International Brotherhood of Teamsters  
25 Louisiana Avenue, N.W.  
Washington, DC 20001

**Re: Election Office Case No. P-204-LU100-SCE**

Gentlemen:

A pre-election protest was filed pursuant to Article XIV, Section 2(b) of the *Rules for the 1995-1996 IBT International Union Delegate and Officer Election ("Rules")* by James A. Beck, a member of IBT Local Union 100. Mr. Beck filed with the Election Officer a "Pre-Election Protest in accordance with Local 100 By-laws Section 19(g)(1) and the I.B.T. Constitution, Art. XXII sec. 5(a)." In his protest, Mr. Beck alleges that a decision of the General Executive Board ("GEB"), which ordered Mr. Beck and Anthony T. Hooks, who were Trustees of the Local Union 100 Severance Pay Trust Fund, to repay certain monies to the Severance Pay Trust Fund and which barred both Messrs. Hooks and Beck from holding union office or trustee positions for a period of three years, did not comport with the local union bylaws or the IBT Constitution. Mr. Beck requested that immediate action be taken to prevent the GEB from unjustly and unlawfully disciplining him and barring him from holding union office.

Mr. Beck did not allege that these actions were taken in retaliation for activities protected by the *Rules*, and never indicated that the actions were taken to bar him from seeking election as a delegate to the International convention. However, the IBT, in providing its position, stated as follows: "It is our determination that the penalty imposed upon Mr. Beck includes barring him from serving as a delegate from Local Union 100 for the IBT International Convention. The IBT considers a delegate to the International Convention to be a position of trust involving the representation of members of the Local."

The protest was investigated by Regional Coordinator Bruce Boyens.

Mr. Beck was charged with breaching his fiduciary duty as Trustee of the Severance Pay Trust Fund by improperly disbursing to themselves \$14,069.00 while ignoring the interests of the other beneficiaries of the Trust Fund. The GEB found them guilty of self-serving behavior but not of embezzlement. Messrs. Beck and Hooks were ordered to repay \$14,069.00 to the Trust Fund plus a \$445.65 penalty imposed because they prematurely cashed the certificate of deposit plus interest. In addition, Mr. Beck was "barred from holding union office or positions as Trustees of Teamster related employee benefit plans for a period of three (3) years." Insofar as there is no allegation or evidence of retaliation against the protester for protected activity under the *Rules*, the Election Officer does not have jurisdiction to review the merits of disciplinary action taken by the GEB. However, the International has taken the position that the discipline taken by the GEB renders the protester ineligible to run as a delegate or alternate. Thus, this question, which emerges from this protest, will be resolved.

If a delegate is an officer of the local union, as the IBT contends, then Mr. Beck is barred from holding the position, by the GEB's decision. If, on the other hand, the position of delegate does not constitute a local union office, the GEB's decision does not affect Mr. Beck's eligibility to be nominated or serve as a delegate or alternate delegate to the International convention.

The IBT Constitution, at Article XXII, Section 2(a), sets forth that "the officers of the Local Union shall consist of a President, Vice President, Recording Secretary, Secretary-Treasurer and three Trustees." This language does not include within local union officers the position of delegate to the International convention.

The Election Officer further finds that an examination of the relevant provisions of the Labor-Management Reporting and Disclosure Act ("LMRDA") demonstrates that the position of delegate is excluded from local union officer positions. Thus, in the interpretive regulations, issued pursuant to the LMRDA, the U.S. Department of Labor ("DOL") states:

Section 3(n) of the Act defines the word "officer." . . . For purposes of the Act, "officer" means "any constitutional officer, any person authorized to perform the functions of president, vice president, secretary, treasurer or other executive functions of a labor organization, and any member of its executive board or similar governing body."

29 CFR § 452.17.

The Election Officer finds that a delegate to the IBT International Convention is not authorized to perform executive functions for the local union and, as noted above, is not one of

the positions designated as an office by the IBT Constitution. In an analogous situation, the regulations of the Department of Labor provide:

A constitutional officer refers to a person holding a position identified as an officer by the constitution and bylaws of the labor organization. Thus, for example, a legislative representative of a labor organization who performs no executive functions and whose duties are confined to promoting the interests of members in legislative matters is nevertheless an officer who is required to be elected where the labor organization's constitution identifies the holder of such a position as an officer. On the other hand, legislative representatives who are required to be elected by the constitution and bylaws of a labor organization are not considered to be officers within the meaning of the Act if they are not designated as such by the constitution, are not members of any executive board or similar governing body, and do not perform executive functions.

29 CFR § 452.18.

While the LMRDA clearly requires that delegates to an International convention be elected, the DOL regulations also make clear that such delegates are not officers within the meaning of the LMRDA. Thus, the regulations at 29 CFR § 452.22 state that delegates to national or international conventions “must be elected by secret ballot . . . even though such delegates are not ‘officers’ of the organization.” (Emphasis supplied.)

In view of the foregoing, the Election Officer finds that a delegate to the International convention is not an officer within the meaning of either the LMRDA or the IBT Constitution.

A delegate or alternate delegate to the International Convention is therefore not an “officer” of a local union. Thus, while Mr. Beck has been barred from holding union office for a period of three years, that penalty does not render him ineligible to be nominated or to serve as a delegate or alternate delegate to 1996 IBT International convention.

The protest is GRANTED as to the limited issue that the GEB decision pertaining to Mr. Beck does not bar him, if he is otherwise eligible, from being nominated and/or being elected to serve as a delegate or alternate delegate to the International convention. In all other respects, the protest is DENIED.

Any interested party not satisfied with this determination may request a hearing before the Election Appeals Master within one day of 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:

James A. Beck  
December 5, 1995  
Page 4

Kenneth Conboy, Esq.  
Latham and Watkins  
885 Third Avenue, Suite 1000  
New York, NY 10022  
Fax (212) 751-4864

Copies of the request for hearing must be served on the parties listed above as well as upon the Election Officer, 400 North Capitol Street, Suite 855, Washington, D.C. 20001, Facsimile (202) 624-3525. A copy of the protest must accompany the request for a hearing.

Sincerely,

Barbara Zack Quindel  
Election Officer

cc: Kenneth Conboy, Election Appeals Master  
Bruce Boyens, Regional Coordinator