

January 2, 1996

VIA UPS OVERNIGHT

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Re: Election Office Case No. P-250-IBT-SCE

Gentlemen:

This 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 Richard Hammond, president of Local Union 988. The protester alleges that Local Union 988 was placed in emergency trusteeship in an effort to intimidate and retaliate against the protester for his public criticism of the actions and policies of General President Ron Carey and the current administration of the IBT in violation of the ***Rules***.

The protester contends that Mr. Carey’s motivation in trusteeing Local Union 988 was to “create an atmosphere of intimidation to chill free expression and participation in the forthcoming election.”

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The IBT responds by asserting that the trusteeship of Local Union 988 was imposed for a legitimate and non-retaliatory purpose and was unrelated to the election or the candidacy of any individual. It denies that its actions effect the election because the trusteeship will not interfere with the ability of members of Local Union 988 to vote or otherwise participate in the delegate or International officer elections.

The protest was investigated by Regional Coordinator Bruce Boyens.

Article VI, Section 5(a) of the IBT Constitution grants the General President the authority to appoint a temporary trustee for a local union pending a permanent trustee hearing. The General President may use this authority if:

[he] has or receives information which leads him to believe that any of the officers of a local union . . . are dishonest or incompetent, or that such organization is not being conducted in accordance with the Constitution and the laws of the International Union or for the benefit of the membership, or is being conducted in such a manner as to jeopardize the interests of the International Union or its subordinate bodies, or if the General President believes that such action is necessary for the purpose of correcting corruption or financial malpractice . . .

The investigation discloses that, on November 20, 1995, Mr. Carey placed Local Union 988 in emergency trusteeship and appointed James E. Buck to serve as temporary trustee. Mr. Carey based this action on the results of an audit of the Local Union's finances, conducted in March 1995, in which it was determined that the protester, as president of Local Union 988, had used union resources to purchase personal items and services valued in excess of \$27,000. The IBT also determined that these expenditures were expressly approved by the local union executive board.

On November 20, 1995, the local union obtained an ex parte temporary restraining order in the United States District Court for the Southern District of Texas barring the IBT from taking action until after the court issued a decision on the matter. The parties presented arguments in a hearing on November 21, 1995 and the Court issued a Preliminary Injunction on November 22. This injunction specifically restrained agents of Local Union 988 from failing to provide the trustee with control of all local union property, assets, and resources and in interfering with the conduct of the temporary emergency trust.

Conduct which is motivated by an alleged retaliatory purpose under the **Rules** is controlled by Article VIII, Section 11(f), which provides:

Retaliation or threat of retaliation by the International Union, any subordinate body, any member of the IBT, any employer or other

person or entity against a Union member, officer or employee for exercising any right guaranteed by this or any other Article of the *Rules* is prohibited.

The *Rules* prohibit retaliation for engaging in election-related conduct protected by the *Rules*. Wsol, P-095-IBT-CHI (September 20, 1995), aff'd, 95 - Elec. App. - 17 (KC) (October 10, 1995).

Alleged violations of this section are not sustainable, however, unless there is some evidence which connects, expressly or through reasonable implication, the protested conduct with the exercise of a guaranteed right under the *Rules*. Giacumbo, P-100-IBT-PNJ (October 13, 1995). See also, Robbins, et al., P-013-IBT-SCE et seq. (June 30, 1995), aff'd, In Re: Murphy, 95 - Elec. App. - 3 (KC) (July 26, 1995). The power to impose a trusteeship is “among the institutional functions of international unions.” In order to sustain a violation of the *Rules*, there must be proof that the exercise of such a legitimate internal union activity was based upon “irrelevant or invidious conditions and implemented to affect the election process.” Giacumbo, P-177-IBT-PNJ (November 2, 1995), aff'd, In Re: Giacumbo, 95- Elec. App. - 38 (KC) (November 28, 1995), citing, Robbins, supra.

The IBT's only action that is relevant to this protest is the imposition of the emergency trusteeship on Local Union 988 on November 20, 1995. This trusteeship was ordered for reasons which are consistent with the LMRDA.¹ While evidence of the protester's public opposition to Mr. Carey and his policies exists, the protester has failed to demonstrate that the trusteeship, which was executed in a manner consistent with the IBT Constitution, was imposed in a fashion or for reasons which violate the *Rules*. The fact that the protester has been an outspoken critic of Mr. Carey's administration does not, in itself, indicate a retaliatory motive for the trusteeship, especially in light of the fact that the IBT has demonstrated that it had sufficient cause to believe financial malpractice had been committed. The IBT Constitution allows the general president to take summary action in such cases so long as such action is temporary pending a trusteeship hearing.

¹Section 302 of the Labor-Management Reporting and Disclosure Act of 1959, as amended (“LMRDA”), 29 USC 401 et seq., provides, in relevant part, that trusteeships may be established:

only in accordance with the constitution and bylaws of the organization which has assumed trusteeship over the subordinate body for the purpose of correcting corruption or financial malpractice, assuring the performance of collective bargaining agreements or other duties of a bargaining representative, restoring democratic procedures, or otherwise carrying out the legitimate objectives of such labor organization.

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Accordingly, the protest must be 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:

Kenneth Conboy, Esq.
Latham & 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