

March 7, 1996

VIA UPS OVERNIGHT

Gerald D. Burns
730 Coquina Court
Orlando, FL 32807

Mario Ferenac, Vice President
Teamsters Local Union 385
126 N. Kirkman Road
Orlando, FL 32811

Re: Election Office Case No. P-533-LU385-SEC

Gentlemen:

A pre-election protest was filed pursuant to Article XIV, Section 2(b) of the *Rules for the IBT International Union Delegate and Officer Election ("Rules")* by Gerald Burns, a member of Local Union 385 and a candidate for delegate on the Independent slate. Mr. Burns alleges that Mario Ferenac, vice president of Local Union 385 and a candidate for delegate on the Local 385 slate, engaged in improper campaigning during a membership meeting on February 24, 1996. Specifically, Mr. Burns states that Mr. Ferenac falsely accused Howard Frady, another member of the Independent slate, of misusing local union funds at the 1991 International convention. Mr. Burns alleges that Mr. Ferenac thereby violated the *Rules* by: (1) making false statements about Mr. Frady; (2) campaigning during a membership meeting in violation of established local union practice prohibiting campaigning inside the local union hall; and (3) campaigning during working hours.

This protest was investigated by Adjunct Regional Coordinator Maureen Geraghty.

Local Union 385 held its February 24 general membership meeting in the local union hall. Approximately 10 to 20 minutes before the meeting started, Mr. Frady approached

Mr. Ferenac in the back of the room and began the exchange on which Mr. Burns' protest is based. Mr. Frady stated, "Mario, I thought you were a man of integrity. Why are you telling lies about me?" Messrs. Frady and Ferenac then began to argue over whether Mr. Frady had lived too well at the 1991 International convention and whether former Local Union 385 officer Larry Parker had paid Mr. Frady's bar bill with the local union's credit card. Among the remarks traded during the argument, Mr. Frady used profanity in calling Mr. Ferenac a "liar," and Mr. Ferenac said, "Hey Howard, the party's over."

A business agent broke up the argument after a few minutes, and Messrs. Frady and Ferenac walked away from each other. There were about 20 members in the meeting room at the time.

The membership meeting began 10 to 15 minutes later, after approximately 20 more members arrived. It was conducted by Local Union 385 President Danny Peterson, who made no reference to the argument, to 1991 International convention expenses, or any campaign statements. Mr. Ferenac spoke briefly during the meeting about an unrelated subject and made no campaign statements.

The protester asserts that the argument engaged in by Mr. Ferenac violated the *Rules*, because Mr. Ferenac engaged in campaigning within the local union hall and on work time. This allegation ignores the fact that it was Mr. Frady who initiated the argument while he and Mr. Ferenac were in the hall and while Mr. Ferenac was on work time.

Article XIV, Section 1 of the *Rules* provides that:

No protest of any person or entity shall be considered if such person or entity, or anyone acting under their direction or control or on their behalf, caused or significantly contributed to the situation giving rise to such protest.

The Election Officer finds that Mr. Frady started the argument with Mr. Ferenac in order to defend his record, credit himself in the election process, and thereby benefit his slate and its other members, including Mr. Burns. Therefore, the Election Officer will not consider Mr. Burns' protest, insofar as it arises from circumstances that Mr. Frady created, i.e., that Mr. Ferenac was inside the local union hall and on work time when he responded to the argument that Mr. Frady started.¹

For the foregoing reasons, the protest is DENIED.

¹With respect to the protester's allegation that Mr. Ferenac's statements about Mr. Frady were false, the Election Officer has consistently held that the *Rules* "do not impose upon candidates the duty to be truthful in their remarks about opposing candidates." Kieffer, P-390-LU435-RMT; Landwehr, P-201-LU795-MOI (November 15, 1995); Newhouse, P-388-LU435-RMT (February 21, 1996).

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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 N. Capitol Street, Suite 855, Washington, DC 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
Maureen Geraghty, Adjunct Regional Coordinator