

OFFICE OF THE ELECTION ADMINISTRATOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: JOHN HULL and
RAY BARTOLOTTI,

Protestors.

) Protest Decision 2001 EAD 193
) Issued: February 26, 2001
) OEA Case Nos. PR020212CA,
) PR022012CA and PR022612CA

John Hull, a member of Local 938 and candidate for delegate on the “938 Members slate” in that local, filed pre-election protests in Case Nos. PR020212CA and PR022012CA pursuant to Article XIII, Section 2(b) of the Rules for the 2000-2001 IBT International Union Delegate and Officer Election (“Rules”) against Ray Bartolotti, president of Local 938 and candidate on the “Hoffa Canadian Unity slate” in Local 938. We issued our decision finding merit to the protest in Case No. PR020212CA and ordering relief in *Hull*, 2001 EAD 153 (February 10, 2001), *aff’d*, 01 EAM 37 (February 21, 2001). While the appeal from our decision in 2001 EAD 153 was pending, we issued a supplemental decision in that case in *Hull*, 2001 EAD 166 (February 14, 2001). In that supplemental decision, we stayed and modified portions of our order in 2001 EAD 153, and ordered that the mailing of ballots in the Local 938 delegate election ballot be postponed until February 27, 2001.¹ The decision in 2001 EAD 166 further ordered that copies of that decision “be posted by Local 938 on each union bulletin board at each worksite that employs Local 938 members, in order that these members may be properly informed of these date adjustments.” We ordered Local 938 to complete that posting by 5:00 p.m., February 20, 2001. Local 938 did not comply with that order.

In lieu of compliance, Bartolotti’s attorney Cynthia D. Watson untimely requested a stay of the notice posting required of Local 938 by 2001 EAD 166.² We discussed Bartolotti’s untimely stay request in *Hull*, 2001 EAD 178 (February 21, 2001), which issued before the issuance of the decision in 01 EAM 37, *supra*, affirming 2001 EAD 153.

Our February 21 decision in 2001 EAD 178 neither granted nor denied the untimely stay request. Rather, due to the filing of Hull’s February 20 protest in PR022012CA, we vacated the posting order established in 2001 EAD 166. In lieu of that posting, we directed that Local 938 post a notice stating as follows on all Local 938 bulletin boards no later than February 23, 2001:

¹ Local 938’s delegate election ballots were originally to be mailed on February 20, 2001, with a March 13, 2001 ballot count date. Our order in 2001 EAD 166 also postponed the ballot count date from March 13, 2001 until March 20, 2001.

² The stay request came in Watson’s facsimile letter of February 20, 2001, which was received by the Election Administrator on February 20, 2001, at 6:26 p.m. EST.

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In a decision issued by me on [February 21, 2001], I have directed that the mailing date for the ballots in the Local 938 delegate election be delayed indefinitely, in order to allow for the investigation and resolution of a protest alleging a violation of the Rules for the 2000-2001 IBT International Union Delegate and Officer Election that may affect the composition of the Local 938 delegate ballot. The membership of Local 938 will be notified before the establishment of a new date for the mailing and the later counting of those ballots.

We have been informed that Local 938 complied with this posting order.

We issued this revised posting order and suspended the mailing of the Local 938 delegate ballots in response to the February 20, 2001 filing by Hull of his protest in Case No. PR022012CA, which alleged that Bartolotti's delegate slate improperly obtained the Local 938 membership list, or a substantial portion thereof, to mail campaign literature to members. We ordered the indefinite suspension in order to allow for proper investigation of the new protest, and any appeal from a decision on that protest. The Hull protest has now been WITHDRAWN, however, after investigation by Election Administrator representative Gwen Randall.

The February 26, 2001 Bartolotti protest was stated in three letters dated today, which we have consolidated as Protest Case No. PR022612CA. Through his counsel, Bartolotti alleges misconduct by the Election Administrator and/or his staff in three respects:

1. Encouraging and soliciting Local 938 independent candidate Gary McKay to exercise his right to mail campaign literature to Local 938 members at Bartolotti's expense, pursuant to the remedial order in 2001 EAD 153, *supra*, as modified in 2001 EAD 166, and affording him until February 26, 2001 to do so;
2. Requiring Bartolotti to pay the costs in addition to postage for the 2001 EAD 153 and 166 remedial mailing; and
3. The Election Administrator's decision in 2001 EAD 178 to indefinitely postpone the mailing of delegate ballots due to the filing of the protest in Protest Case No. PR022012CA.³

³ The new Bartolotti protest also requests a stay of the Local 938 election on two grounds: (1) in order to allow time for completion of the investigation of the now-withdrawn Hull protest in Case No. PR022012CA and (2) the creation of an appearance of bias by the Election Administrator and his staff through its dealings with independent candidate McKay.

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Pursuant to Article XIII, Section 2(f)(2), I hereby DEFER resolution of these protests until after the Local 938 delegate election, and will treat the allegations in PR022601CA as a post-election protest pursuant to Article XIII, Section 3 of the *Rules*, as if the protest was filed on election day.

We also DENY Bartolotti's request that we further stay the mailing of ballots to Local 938 members for two reasons.

First, the claim of bias concerning the contact by General Counsel Michael Nicholson and Canadian Regional Director Gwen Randall is unlikely to succeed on the merits. Thus, Nicholson and Randall contacted McKay for the sole reason of affording him the opportunity to invoke his right to a remedial mailing of campaign literature under the decisions in 2001 EAD 153, 2001 EAD 166 and 01 EAM 37. McKay was informed of his right and given an explanation of the manner in which it could be invoked, if that was McKay's wish. He was also informed that he need not invoke his right, and was asked to advise the Election Administrator's staff of his decision. Late in the day on February 23, 2001, Watson told the Election Administrator's staff that McKay would not invoke his right to send a mailing, a choice that was confirmed by McKay's spouse by telephone to Nicholson on February 26, 2001.

Second, the Hull protest in Case No. PR022012CA has now been withdrawn and therefore does not support the requested stay. Instead, due to that withdrawal, we now conclude that the mailing of the Local 938 delegate election ballots may go forward on February 27, 2001, since ballots are ready to be mailed. In order to notify members, Local 938 is ordered to post the notice attached hereto as Exhibit A on each of Local 938's bulletin boards at every Local 938 worksite, as well as at all Local 938 offices. Any party contributing to any failure or delay in this posting will be subject to remedial action under Article XIII, Section 4 of the *Rules*. The posting required herein should be completed by 5:00 p.m. February 28, 2001.

Any interested party not satisfied with this determination may request a hearing before the Election Appeals Master within two (2) working days of receipt of this decision. The parties are reminded that, absent extraordinary circumstances, no party may rely upon evidence that was not presented to the Office of the Election Administrator in any such appeal. Requests for a hearing shall be made in writing, shall specify the basis for the appeal, and shall be served upon:

Kenneth Conboy
Election Appeals Master
Latham & Watkins
Suite 1000
885 Third Avenue
New York, New York 10022
Fax: 212-751-4864

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Copies of the request for hearing must be served upon all other parties, as well as upon the Election Administrator for the International Brotherhood of Teamsters, 727 15th Street NW, Tenth Floor, Washington, DC 20005, all within the time period prescribed above. A copy of the protest must accompany the request for hearing.

William A. Wertheimer, Jr.
William A. Wertheimer, Jr.
Election Administrator

cc: Kenneth Conboy (via fax: 212.751.4864)
2001 EAD 193

NOTICE TO ALL MEMBERS OF IBT LOCAL 938

February 26, 2001

TO: ALL MEMBERS OF IBT LOCAL 938

**FROM: WILLIAM A. WERTHEIMER, JR., ELECTION
ADMINISTRATOR FOR THE IBT**

In a decision issued by me on the above date, I have directed that the mailing date for the ballots in the Local 938 delegate election be reset for February 27, 2001. That mailing date was previously suspended in order to allow for the investigation and resolution of a protest alleging a violation of the Rules for the 2000-2001 IBT International Union Delegate and Officer Election that could have affected the composition of the Local 938 delegate ballot. That protest has now been withdrawn following investigation.

William A. Wertheimer, Jr.
William A. Wertheimer, Jr.
Election Administrator

Exhibit A

Hull, 2001 EAD 193
February 26, 2001

DISTRIBUTION LIST VIA UPS NEXT DAY AIR AND FAX WHERE INDICATED:

Patrick Szymanski
IBT General Counsel
25 Louisiana Ave. NW
Washington, DC 20001
Fax: 202.624.6884

IBT Local 938
275 Matheson Blvd. East
Mississauga, ON
Canada L4Z 1X8
Fax: 905.502.0076

Bradley T. Raymond
Finkel, Whitefield, Selik,
Raymond, Ferrara & Feldman
32300 Northwestern Highway
Suite 200
Farmington Hills, MI 48334
Fax: 248.855.6501

John Hull
3231 Eglinton Ave. East
Suite 1705
Scarborough, ON
Canada M1J 3N5

J. Douglas Korney
Korney & Heldt
30700 Telegraph Road
Suite 1551
Bingham Farms, MI 48025
Fax: 248.646.1054

Joe Pansino
Traders General Insurance Co.
2206 Eglinton Avenue East
11th Floor
Scarborough, ON M1L 4S8

Barbara Harvey
Penobscot Building
Suite 1800
645 Griswold
Detroit, MI 48226
Fax: 313.963.3572

Gwen Randall, Q.C.
Suite 3300
421 7th Avenue SW
Calgary, AB
Canada T2P 4K9
Fax: 403.260.3501

Betty Grdina
Yablonski, Both & Edelman
Suite 800
1140 Connecticut Ave. NW
Washington, D.C. 20036
Fax: 202.463.6688

Cynthia D. Watson
3555 Lakeshore Blvd. West
Toronto, ON
Canada M8W 1P4
Fax: 416.253.7660

Tom Leedham c/o Stefan Ostrach
110 Mayfair
Eugene, OR 97404
Fax: 541.607.4484

Michael Goldberg
73 Harrowgate Drive
Cherry Hill, NJ 08003
Fax: 302.477.2255

Ray Bartolotti
63 Centennial Parkway South
Stoney Creek, ON
Canada L8G 2C6

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Rick Fyvie
2-601 Galahad Drive
Oshawa, ON
Canada L1J 6T1

Clay Nickerson
702-1900 Bloor Street East
Mississauga, ON
Canada L4X 2S1

Debora Jones
812-1900 Bloor Street East
Mississauga, ON
Canada L4X 2S1

Craig McInnes
113 First Street North
Stoney Creek, ON
Canada L8G 3N8

Noel Holohan
147 Aylmer Crescent
Stoney Creek, ON
Canada L8J 1K1

Allan Linkletter
291 East 12th Street
Hamilton, ON
Canada L9A 3X7