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***Election Supervisor's Response to Comments Received
On Published Rules for 2020-2021 IBT International Officer and Delegate Election***

On February 11, 2020, the Office of the Election Supervisor (OES) published for comment the Rules for the 2020-2021 IBT International Union Delegate and Officer Election. The published Rules included non-material changes permitted by the Final Order in *United States v. International Brotherhood of Teamsters* to tailor the Rules used in the 2015-2016 election cycle to the current one.¹ In addition, the published Rules included two material changes adopted by the Election Supervisor, each material change fully consistent with federal law, the IBT Constitution, and the Final Order. The first material change added a provision establishing that, when more than one mail ballot is received from a member and the date the last ballot was returned cannot be ascertained from postmark or other evidence, the ballot last sent to the member will be the one counted and the other one voided. The second material change codified in the Rules the existing practice that when a vacancy occurs in a local union's delegation to the International Convention, the vacancy will be filled first by the delegate of the next lower rank, with each succeeding vacancy filled in the same manner until the last-ranked delegate has moved up one rank, at which point the vacancy in the last-ranked delegate position will be filled by the first-ranked alternate delegate.

OES invited comments on the published Rules and the material and non-material changes made to them. The request for comments was published on our website, www.IBTvote.org (in English, Spanish, and French); the IBT's website, Teamster.org; and in the *Teamster* magazine (in English and Spanish) mailed to rank-and-file members so as to be received during the week of February 10, 2020. Members in Canada, where the magazine is not distributed, were sent a separate notice by mail, in English and French. The deadline for submitting comments was Friday, March 13, 2020.

We received a submission from one commenter, Teamsters Canada, through Pierre-André Blanchard, Special Assistant to Teamsters Canada President François Laporte. This memorandum summarizes the comments received from Teamsters Canada and their disposition.

¹ The Final Order requires the International Union Delegate and Officer Election to be conducted using Rules that are "substantially the same as those which governed the previous IBT elections."

Use of Social Insurance Number on election-related documents.

The first comment from Teamsters Canada urged that the Rules be amended to omit any requirement that members divulge their Social Insurance Number, or portion thereof, in any context. The comment urged that any such requirement either violates Canadian law, or is strongly discouraged as a practice, and should therefore be eliminated.

The Social Insurance Number (SIN) is a unique 9-digit number assigned to each Canadian citizen and permanent resident by Employment and Social Development Canada. It was created originally as a client account number in the administration of the Canada Pension Plan and other employment security programs and was subsequently expanded for use in tax reporting.

Similar to the SIN, the Social Security Number (SSN) in the United States is likewise a unique 9-digit number issued by the U.S. Social Security Administration to U.S. citizens and permanent residents. It is used for claiming benefits from the Social Security Administration and other employment security agencies and for tax reporting. In comparison with the SIN, the SSN is used more broadly in the U.S. by financial institutions, including banks and other lenders, issuers of credit cards, credit reporting agencies, and insurance companies and is widely used as an identifier.

The Rules for the 1991 IBT International officer election required that candidates, nominators, seconders, and signers of accreditation petitions for International officers disclose their full 9-digit SSN/SIN numbers in order to verify membership status. Each member's record in the IBT's membership database includes the member's full SSN/SIN.

Beginning in the 2011 election cycle, the Rules have required members to disclose only the last 4 digits of the SSN/SIN when participating in the election-related activities calling for that identifier. The Rules we published on February 11, 2020 for the 2020-2021 election cycle continue these provisions.

The shift from full SSN/SIN to the last four digits only (referred to here as "truncated SSN/SIN" or "SSN/SIN4") occurred in the context of a rise in use of the full SSN in U.S. financial transactions and an increase in internet commerce. At the same time these new and convenient business methods came into wider use, the risk of identity theft—sometimes accomplished by combining a person's name with other data such as birthdate, address, or full SSN—increased. The Rules' drafters sought to limit that risk in connection with the IBT officer election by requiring the use of only a truncated SSN/SIN, which would make the number significantly less useful to a thief or hacker while still permitting the Election Supervisor to verify member identity.² We have found that the combination of three identifiers—member name, local union number, and truncated SSN/SIN—allows us to reach, very efficiently and with a high degree of confidence, two conclusions that are essential to election integrity. First, this combination

² OES is not aware of any security breach, or of any incident of identity theft, relating to personal information under its control.

positively associates the information submitted with a unique IBT member record. That allows OES to analyze an individual's good standing to participate in the electoral process. Second, requiring that an individual supply his/her SSN/SIN4 serves an important, circumstantial anti-forgery purpose because experience shows an overwhelmingly high likelihood that only the actual owner of that number can supply it accurately. Experience further shows that no other field in the IBT database serves this confirmatory function as efficiently.

Teamsters Canada seeks to discontinue use of SIN4 altogether to reduce the risk of identity theft and increase the participation of members who, because of the perceived risk of identity theft, may be dissuaded from participating in the electoral activities for which the SIN4 is required. In support of this comment, Teamsters Canada stated that, by law, "the full disclosure of a SIN cannot be required for the signing of an accreditation petition, the making of a campaign contribution or the casting of a ballot." With respect to use of SIN4, "[w]e are also of the opinion that even the partial disclosure of a SIN, like the last (4) digits, cannot be required." The commenter provided Government of Canada documents identifying the circumstances in which disclosure of the full SIN can be required. These documents do not speak to the use of a truncated SIN, such as SIN4, for the purposes the Rules require.

We received Teamsters Canada's comments in the spirit in which they were offered: as recommendations to improve the democratic processes by which International officers are elected by reducing perceived barriers to rank-and-file participation. In addressing these comments, we first researched Canadian federal and provincial law to determine what is lawful and unlawful with respect to SINS. We consulted Kris Klein, an Ottawa, Ontario solicitor who is expert in Canadian privacy law and has authored treatises on the subject. Mr. Klein is unaffiliated with the IBT, any local union or other subordinate body, or the OES. He reviewed the Rules and Teamsters Canada's comments with respect to use of SIN and SIN4. Based on that review and his expertise, he reached two main conclusions:

First, no federal law prohibits the collection of an individual's full or truncated SIN by organizations within Canada, including Teamster Election officials; while Employment and Social Development Canada discourages collection of full SINS, the practice is not prohibited.

Second, provincial privacy laws in Quebec, Alberta, and British Columbia likewise do not prohibit collection of an individual's SIN, including in truncated form. However, these laws consider the SIN, both full and truncated, as "personal information." Use of such personal information for screening purposes, as the Rules contemplate, is permissible under these statutes. Nonetheless, safeguards should be established and maintained to protect the information. At minimum, these safeguards must include a) providing members advance notice of the purpose for which the information is collected so they may decline to provide it if they choose; b) protecting the personal information collected; and c) securely destroying it when it is no longer needed.

U.S. law is no more restrictive than Canadian federal and provincial law. Therefore, any Rules modification or change in procedure that meets the requirements of Canadian law will also satisfy U.S. law.

We have evaluated our need for accurate identification of persons engaged in particular election activities and to verify their eligibility to participate, against the risk of loss or theft of the personal information members supply that identifies them. Using this balancing measure, we will continue unchanged the requirement of SSN/SIN4 for the following purpose:

- **Requests for verification of eligibility.** These requests are made to OES by the persons who seeks verification of their eligibility to nominate, second a nomination, or stand for election as delegate, alternate delegate, or International officer. Each individual's personal information is transmitted directly to OES by that person and is used by OES only for the purpose of verifying eligibility according to the IBT database. Our need to use the personal information to verify identity and eligibility is high, and the risk of misuse of it is low to non-existent. Our eligibility verification form informs the member of the purpose for which the personal information is collected.

Using the previously identified balancing measure of our need to verify identification and eligibility against the risk of misuse of personal information, we will alter portions of two Rules provisions that currently require members to divulge the SSN/SIN4 to campaign or local election officials that are not part of OES. The Rules will be modified to make disclosure of the SSN/SIN4 in such situations voluntary on the part of the participating member. As noted above, supplying the SSN/SIN4 is the most efficient way to match an individual to the member record; use of other information may require some additional investigation or confirmation, and whether that will be necessary will, in essence be the member's choice. The two changes are as follows:

- **Nominating, seconding, and accepting nomination for the positions of local union delegate and alternate delegate.** The published Rules provision (and established practice) requires, nominators, seconders, and candidates to provide their SSN/SIN4s to the local union election committee or, where applicable, the third-party election administrator hired by the local union to administer the election, and to the OES representative assigned to that local union. Specifically, Article II, Section 5(f) as published states, in relevant part, that a written nomination or second "shall contain the last four digits of his/her Social Security number." This information has been required whether the nomination, second, or acceptance is submitted in writing or is made from the floor at the nomination meeting.

To accommodate the concerns expressed by Teamsters Canada, this provision will be modified to *require* the submitting party's complete mailing address and to *request*, but not require, the person's SSN/SIN4. If needed to resolve questions of identification for the purpose of determining eligibility, OES may separately contact the submitting

individual directly and request the SSN/SIN⁴. The amended Rule, further restyled and renumbered for clarity, follows:³

(f) Any member eligible to nominate or second a nomination may do so by a writing submitted to the Local Union Secretary-Treasurer. The writing shall state whether it is a nomination or a second, the name of the member being nominated or seconded, and whether the nomination or second is for delegate or alternate delegate. It shall be signed by the member submitting the nomination or second and shall provide his/her complete mailing address. The submitting individual may also choose to provide the last four digits of his/her Social Security number.^[4] At the nomination meeting, the presiding Local Union officer shall announce and treat ~~a the~~ written nomination or second as if it had been made from the floor of such meeting. The Election Supervisor may separately request a nominator, seconder, or candidate to provide the last four digits of his/her Social Security number directly to the Office of the Election Supervisor to verify eligibility.

(g) A written nomination or second must be received by the Local Union Secretary-Treasurer no later than 5 p.m. of the day immediately prior to the day of the relevant nomination meeting (if the nomination meeting is scheduled to occur after 5 p.m., the written nomination or second must be received by the Local Union Secretary-Treasurer no later than 5 p.m. of the day of the meeting).

(gh) Nothing shall prohibit any member in good standing from nominating or seconding more than one candidate. Nothing shall prohibit more than one member in good standing from nominating or seconding any candidate. A candidate may decline to be nominated or seconded by a particular person or persons.

(hi) To be eligible for nomination, a member must be nominated and seconded by a member in good standing, each with his/her dues paid through the month prior to the nominations meeting; the member must be eligible to be nominated, pursuant to Article VI of these Rules; and the member must accept his/her nomination at the time made either in person, or, if absent, in writing. If acceptance is made in writing, the document must be presented to the presiding Local Union officer no later than the time the member is nominated.

³ Deleted text is ~~struck through~~; new text is underlined.

⁴ The term "Social Security number" is defined in the Rules to include Social Insurance Number. Published Rules, *Definitions*, Section 43.

(ij) No member may accept nomination for both a delegate and an alternate delegate position.

(jk) After a candidate has accepted nomination, he/she may not, under any circumstance, revoke acceptance once the ballots are printed, except where as a result of such revocation the remaining candidate(s) are left unopposed.

- **Candidate Accreditation Petitions.** The published Rule concerning candidate accreditation petitions provides, at Article X, Section 2(a)(2) that a petition have space for each signatory “to sign his/her name, to print his/her name, and to list his/her Local Union number and last four digits of his/her Social Security number.” The person circulating the petition and collecting the signatures was also required to provide the “last four digits of his/her Social Security number.” Article X, Section 2(a)(3). This portion of each of these published Rules will be modified to require disclosure of the individual’s mailing address, including zip code or postal code, and to request voluntary disclosure of the SSN/SIN4, as follows:

(2) Space for each signatory to sign his/her name, to print his/her name, mailing address, including zip code or postal code, ~~to~~ list his/her Local Union number, and, if the member chooses, the last four digits of his/her Social Security number; and

(3) Space at the bottom for each circulator to state his/her name, mailing address, including zip code or postal code, Local Union number, and if the member chooses, the last four digits of his/her Social Security number and to certify the validity and accuracy of the petition's contents.

Consistent with these changes, Article X, Section 4(a)(1)(i) is revised as follows:

(i) the signatory or circulator failed to sign and print his/her full name or to state his/her mailing address, including zip code or postal code, Local Union number or last four digits of his/her Social Security number;

A new Article X, Section 4(a)(1)(v) is added, as follows:

(v) Provided, however, that a signature shall not be invalidated under the foregoing criteria solely because the signatory did not provide the last four digits of his/her Social Security number, if the Election Supervisor, in his discretion, finds from the other information the signatory provided that the signature is valid.

We make these changes to limit the use of and access to, SSN/SIN4s to circumstances where members voluntarily disclose the information to aid in the efficient administration of the election, while allowing an alternative for members not comfortable with making that disclosure.

A candidate or campaign always has the burden of proving that the paper petitions it submits for the purpose of gaining accreditation contain the valid, non-forged signatures of members in good standing. In the usual course, several elements combine to sustain that burden, including the handwritten information and distinct signature of the member, the member's full address including zip or postal code, the member's SSN/SIN4, and the canvasser's signed certification that the information was provided and signature signed in the canvasser's presence. As noted previously, OES has relied on a member's ability to state his/her SSN/SIN4 accurately as a check against forgery. These amendments will permit a member to sign a paper accreditation petition without disclosing his/her SSN/SIN4, but the candidate or campaign submitting the signature will still bear the burden to establish the authenticity of the signature. The paper accreditation petition form informs the member of the purpose for which the identifying information will be used, including the SSN/SIN4 if the member elects to supply it.

Section 4(a)(1) as published carried forward from prior Rules a provision that a petition signature would be voided if the signatory failed to provide his/her address. Both that section and Sections 2(a)(2) and 2(a)(3) have been amended to include as a consistent requirement that the signatory state his/her mailing address, including zip code or postal code. That information provides circumstantial information to identify the member in the IBT database (recognizing that piece of data is not as efficient a tool for verification as the SSN/SIN4). The information collected on accreditation petitions a candidate or campaign collects will be used by OES when petitions are submitted and may also be used by the collecting candidate or campaign for campaign purposes. The notice on the accreditation petition reflects this potential dual use.

During this review process, we noted that Article IV, Section 6(a) concerning the return of voted ballots in the International Officer referendum vote contains a requirement relating to SSN/SIN4 disclosure that is outdated. The section provides that if "the pre-affixed label" with member-identifying information is missing from the BRE, the member should write his/her name, address and SSN/SIN4 on the return envelope. Teamsters Canada commented generally about the use of SSN/SIN4, but did not comment on this provision.

The provision is an artifact from earlier election cycles and will be amended to delete the instructions to write on the BRE. First, member identification information is now printed directly on the BRE, so "pre-affixed labels" are not used. That printed information, which includes the member's mailing address (which is the return address on the BRE) is protected within the ballot mailout envelope while being delivered to the voting member. Second, no part of a member's SSN/SIN4 is used in the printed identification information so there is no reason or need to request that information. Other word changes reflect the materials currently used to implement ballot secrecy and the return of voted ballots.

Article IV, Section 6(a) will be revised as follows:

(a) Once mail ballot materials are received, the member shall cast his/her vote(s), place the ballot in the secret ballot ~~envelope-sleeve~~ (without making any mark on that ~~envelopesleeve~~) and place the secret ballot ~~envelopesleeve~~ in the ~~stamped-postage-paid~~ return envelope and then place the return envelope in the mail. ~~If the pre-affixed label on the return envelope is missing, the member should write his/her name, address, last four digits of his/her Social Security number and Local Union Number in the upper left hand corner of the return envelope.~~

Elimination of anonymous complaints

Teamsters Canada also commented that the Election Supervisor should, categorically, not consider anonymous complaints about activity the Rules regulate. Teamsters Canada argued that the Election Supervisor cannot maintain a credible protest process without knowing the protestor's identity and that Article XIII of the Rules requires identification of protestors.

Responding to this comment, protestors almost universally identify themselves when filing protests, and the Election Supervisor relies on evidence provided by identified protestors to evaluate the merits of protests. In rare instances, a person so fears retaliation that he/she anonymously transmits a tip to OES instead of filing a protest.

While Article XIII contemplates that protestors identify themselves, the article also permits the Election Supervisor to remedy Rules violations without a protest. An example from the 2016 election cycle is *Certain Accreditation Petitions from Local Union 938*, 2016 ESD 150 (March 21, 2016), where after receiving an anonymous tip we determined through review of accreditation petitions and interviews of canvassers that certain petitions circulated in Local Union 938 were invalid because the certification of signature authenticity was falsely made.

Under these circumstances, we conclude that the language of Article XIII gives the Election Supervisor appropriate tools by which to enforce the Rules. The protestor's identity is disclosed in virtually every filed protest, but the Election Supervisor retains discretion—rarely exercised—to initiate inquiries without protest or following information supplied anonymously. Accordingly, we decline Teamsters Canada's request to change the Rules in this regard.

Comments concerning postal regulations, voter eligibility and replacement ballots

Teamsters Canada presented three comments with respect to voting process. None of these requested changes in the language of the published Rules. We address them because we seek to continue a constructive dialogue concerning the election process.

Teamsters Canada requested that OES comply with Canada Post regulations with respect to placement of the return address on Ballot Return Envelopes (BRE). The main address on the BRE is the postal box to which voted ballots are mailed; the return address is that of the voting member. The member identification contained in the return address is used at the ballot count to check the member's eligibility to vote.⁵ The BRE used in the United States is designed to comply with U.S. Postal Service rules, and the BRE used in Canada is designed to comply with Canada Post regulations. The envelope has in the past been presented to each postal authority for approval, and that practice will be followed in the current election. Placement of the member's address on the back of the BRE complied with postal regulations as they existed in each nation in 2016, and the BRE in that format was approved by the postal authorities of both nations. In 2018, the U.S. Department of Labor issued an advisory that a member's return address should be placed on the front of the envelope to limit the possibility that machine-processing error will cause the BRE to be returned to the member rather than sent to the postal box for voted ballots. The IBT circulated this advisory to its constituent bodies and to OES. OES will design the BRE used in each nation to comply with the USDOL advisory.

Teamsters Canada also requested that OES not mail ballots to persons who clearly are ineligible to vote, citing Rand and retirees as examples. The Rules establish ballot eligibility (*i.e.*, those persons entitled to receive a ballot) according to codes assigned them in the TITAN member database (or equivalent system for local unions that do not use TITAN). Included are active members, whether cash or check-off payers, new members, and officers, stewards, and alternate stewards. Excluded are non-members, including retirees, agency-fee payers (whether Rand formula, fair-share, or administrative-fee), members on withdrawal, and those suspended or expelled from membership. The categories of persons that Teamsters Canada asked be excluded from the ballot mailing because they are not, or are no longer, members are already excluded. The only reason such persons might receive ballots is if they were miscoded as ballot-eligible by the local union.

Teamsters Canada also requested changes in the way telephoned ballot requests are handled in order to expedite delivery of replacement ballots to those requesting them. Teamsters Canada cited instances in 2016 where a French-speaking operator was unavailable to French-speaking members who phoned for a ballot.

For the 2021 International officer election, OES will implement the following: for members of local unions in Quebec, separate phone numbers will be established for English and French speakers that are answered by operators who speak the language of the caller. This will replace the previous system that provided one phone number for all members seeking replacement ballots and required French-speaking callers to await a return call from a French-speaking operator.

⁵ Once eligibility is verified, the BRE is opened, the security sleeve containing the secret ballot is removed, and the sleeve is shuffled with other security sleeves before ballots are removed. In this way, individual ballot secrecy is maintained.

Finally, Teamsters Canada requested that members requesting replacement ballots be permitted to vote electronically through an internet-based platform. This request cannot be granted. First, the IBT Constitution requires that all voting in the election be conducted “by mail ballot in accordance with Department of Labor regulations.” IBT Constitution, Article IV, Section 3(c). Second, while the U.S. Department of Labor approves the use of mail balloting for union officer elections, it has not approved remote e-voting, principally because of security and ballot secrecy issues.

Prohibit negative campaigning in Canada

Teamsters Canada commented that negative campaigning by American campaigns should be banned in Canada. It argued that such campaigning reflects poorly on the union generally and has sometimes been used by rival unions to raid or discredit Teamsters Canada. As an alternative, the comment requested that if negative campaigning continues to be permitted, a rule be adopted forbidding use of the Teamsters Canada logo on such material.

A hallmark of the Rules is the free exchange of ideas. *See* published Rules, Article VII, Section 12; Article XII (incorporating LMRDA “Bill of Rights,” a provision included in the Election Rules since at least the 1996 election cycle). A candidate must be permitted to inform members of the issues the union faces, how he/she will address those issues if elected, and why he/she is a better choice for members than an opposing candidate. Members must be permitted to hear this information and evaluate its merit for themselves. The Rules encourage such speech and take no position on whether candidates disseminate positive or negative messages. *E.g.*, published Rules, Article VII, Section 7(f) (Union may not censor, regulate, alter or inspect any candidate’s campaign literature). The campaign rights embodied in the Rules are premised on the principle that the remedy for what one candidate regards as negative, misleading or unfair speech is more speech. Experience has shown that the goal of an informed membership cannot adequately be achieved by regulation of speech under the Rules. Rather, open and robust campaigning tends to produce an engaged electorate that is informed on the issues.

Campaign symbols, whether the IBT or Teamsters Canada logo or national flags, also may appropriately be used in campaigning without constituting an endorsement under the Rules. Given that such symbols have been available to all candidates over multiple election cycles, the Election Supervisor sees no compelling basis for limiting or prohibiting their use now. *See Majka*, E.O. Case No. P-226-LU812-PGH (Jan. 10, 1991); Published Rules Article XI, Section 1(b) (use of official union stationery prohibited but “[o]ther use of the Union’s name, insignia, or mark by Union members, in connection with the exercise of rights under these Rules, is permitted”).

French translation of official election documents

Teamsters Canada commented on the need for proper translation of official election documents. This is a goal that the Election Supervisor shares. Notices, ballots, instructions, and forms are produced and available in English, French, and Spanish. For local unions with significant

membership percentages who speak languages other than these as their first language, election documents have been and will be translated to those languages as well. The goal of this translation effort is to eliminate language as a barrier to participation in the election process.

Particular to Teamsters Canada's comment, the Election Supervisor will continue to use a respected firm for translation of official election documents to the French language.

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The Rules were published just as the COVID-19 pandemic was starting to erupt in the United States, and shortly before government authorities imposed restrictions on work, public gatherings, and social interactions—all in the interests of protecting public health. At this writing we do not know, and cannot predict, how long certain restrictions will remain in place. Some of those restrictions could affect activities usually conducted as part of the campaigning and election process under the Rules.

The OES will stay abreast of developments in this area, and may issue Advisories to adjust certain rules and practices relating to the election, or develop new procedures consistent with the Rules to allow a robust, open, and fair election process to proceed consistent with measures required by relevant authorities to protect public health.

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