



OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMS, U.S.
25 Louisiana Avenue, NW
Washington, DC 20001
(202) 624 8778
1-800 828-6496
Fax (202) 624-8792

Michael H Holland
Election Officer

November 29, 1990

Chicago Office:
% Cornfield and Feldman
343 South Dearborn Street
Chicago, IL 60604
(312) 922-2800

VIA UPS OVERNIGHT

VIA FACSIMILE

Wesley Epperson
1702 Evanston
Independence, Missouri 64052

Dan Johnson, President
IBT Local Union 41
4501 Van Brunt Boulevard
Kansas City, Missouri 64130

Re: Election Office Case No. P-063-LU41-MOI

Gentlemen:

A pre-election protest was filed pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*"). The complainant, Wesley Epperson, alleges in his protest that the posting of the nominations results for delegate and alternate candidates in Local Union 41 was unreasonably delayed by the Local Union, and that therefore the mailing of the ballots in that election should be similarly delayed. The Election Officer's investigation revealed the following undisputed facts.

On Saturday, November 10, 1990, Local Union 41 held its nominations meeting for delegate and alternate delegate candidates. At that meeting, thirty-one (31) members were nominated for either the delegate or alternate positions. Subsequently, the eligibility of two candidates, Robert L. Sharp and Norman D. Baker, was challenged. Pending resolution of these challenges, the Local Union did not post the results of the nominations meeting, nor was the Local Union directed by the Election Officer to do so. In fact, the Election Office advised the Local Union to defer the posting pending the resolution of these two challenges.

On November 20, 1990, the Election Officer ruled the above two members ineligible to run, and on November 21, 1990, the Election Office representative, William O. Eisler, informed the Local Union of the order in which the remaining candidates were to appear on the nominations posting. Late in the afternoon on November 21, 1990, Mr. Eisler directed the Local Union to initiate such posting on November 23, 1990, notwithstanding the fact that the Local Union Office was to be closed that day. The Local Union initiated the posting pursuant to Mr. Eisler's directive on November 23, 1990. Due to the intervening Thanksgiving Holiday and weekend, and despite what I find to be its best efforts, the Local Union was not able to prepare,

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distribute, and post the nominations results until November 26 and 27, 1990, at which times the postings were accomplished. The mail ballots for Local Union 41 are due to be mailed during the week of December 3, 1990, and are to be returned no later than 12.00 noon on December 27, 1990.

The Election Officer finds that the failure to timely post constitutes a technical violation of the *Rules*. However, the Election Officer finds that the Local Union did not intend to violate the *Rules*. Further, the Local Union was advised, albeit incorrectly, by the Election Office not to post until the eligibility challenges were resolved.

The Election Officer has determined that the *Rules* do not fully provide appropriate guidance with respect to posting in those situations where there are outstanding protests or appeals regarding the eligibility of nominated candidates. The Election Officer will, therefore, be issuing in the future an Advisory to the IBT, all IBT subordinate bodies, and to all representatives of IBT members and officers to address this arguable gap in the *Rules*.

Any misconception concerning whether an election will occur created by the untimely posting is ameliorated by the fact that this is a mail ballot election. All Local Union 41 members will personally receive a ballot and election information at their homes, which will serve as further notice of the fact that an election is occurring. Furthermore, notice of the election was mailed to all members of Local Union 41 on October 1, 1990. To alter the election date would only serve to create confusion and uncertainty among the membership over when or even whether an election will occur.

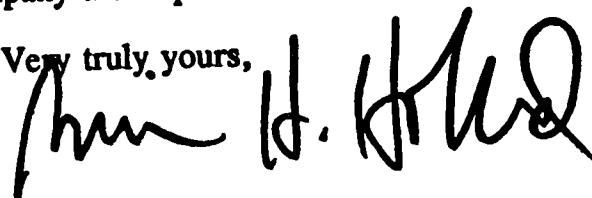
However, given the late posting and to enhance all candidates' ability to campaign while still permitting sufficient time for the delivery and return of the mail ballots, the Election Officer and his representatives will effectuate the mailing of the ballots on December 7, 1990. This is consistent with the Election Officer-approved Delegate Nomination and Election Notice for IBT Local Union 41 stating that the ballots be mailed "on or about the week of December 3, 1990"; it also effectively extends the time for campaigning without unduly limiting the members' ability to vote.¹

¹ After this decision was initially prepared, the Election Officer received a submission from counsel Paul Levy, Public Citizen Litigation Group, indicating he was representing the protestor. Aside from the misstatements contained in that submission, e.g., that ballots are to be mailed by the Local Union and that there exists "some understanding" that prohibits "UPS Locals" from holding delegate elections in December, the Election Officer believes that this decision fully responds to the contentions raised in that submission.

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If any interested party is not satisfied with this determination, they may request a hearing before the Independent Administrator within twenty-four (24) hours of their 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 the Independent Administrator, Frederick B. Lacey, at LeBoeuf, Lamb, Leiby & MacRae, One Gateway Center, Newark, New Jersey 07102-5311, Facsimile 201-622-6693. Copies of the request for hearing must be served on the parties listed above, as well as upon the Election Officer, International Brotherhood of Teamsters, 25 Louisiana Avenue, N W., Washington, D. C. 20001, Facsimile 202-624-8792. A copy of the protest must accompany the request for a hearing.

Very truly yours,



Michael H Holland

MHH/kpm

cc: Frederick B. Lacey, Independent Administrator, IBT (via facsimile)
William O. Eisler (via facsimile)
Daniel I. Koen (by hand)
Paul Levy, Public Citizen Litigation Group (via facsimile)