

OFFICE OF THE ELECTION OFFICER  
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
25 Louisiana Avenue, NW  
Washington, DC 20001

Michael H. Holland  
Election Officer

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November 29, 1991

Walter Shea  
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Baptiste & Wilder  
1919 Pennsylvania Ave., N.W.  
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Washington, D.C. 20006

R.V. Durham  
c/o Hugh J. Beins, Esq.  
Beins, Axelrod, Osborne  
& Mooney  
2033 K St., N.W.  
Suite 300  
Washington, D.C. 20006-1002

Re: Election Office Case No. P-1124-IBT

Gentlemen:

A protest has been filed with the Election Office pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*"). In that protest counsel for the Shea-Ligurotis Slate alleges that a communication from the Campaign Director of the R.V. Durham Unity Team to "Local Union Officers" is violative of the *Rules*. The Shea-Ligurotis Slate alleges that the communication encourages, in violation of the *Rules*, members of the IBT who have already cast ballots on behalf of their slate to request a new ballot so that they can change their vote to the "R.V. Durham Unity Team". The Election Officer's investigation of this protest revealed the following.

On November 25, 1991, Chris Scott, the Campaign Director for the R.V. Durham Unity Team sent a memo to certain "Local Union Officers". In that memo Scott states that "Dan Ligurotis was indicted today for second-degree murder and obstruction of justice". The memo also states that a vote for Shea-Ligurotis is a vote for "Carey/TDU", that Union officers who want the Union to succeed "shudder at the thought of a "Carey/TDU victory" and that Union officials in various cities have recently announced their support for Durham.

The memo goes on to state that "[i]t's not too late to shift, even if you previously supported Shea-Ligurotis" and concludes by stating:

If you or your members have mismarked a ballot, you can obtain a new ballot by calling 1-800-IBT-VOTE. The ballot with the latest postmark will be counted.

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Shea-Ligurotis contends that these statements, coupled with the campaign rhetoric contained in the memo, is a blatant attempt to solicit IBT members who have already cast ballots for the "Shea-Ligurotis Action Team" to switch their vote to the "R.V. Durham Unity Team" by requesting a duplicate ballot from the Election Officer and casting that duplicate ballot for the Durham slate. Accepting that characterization of the Scott memo, the Election Officer, for the reasons stated below, concludes that this solicitation does not violate the *Rules*.

As all parties are aware, the election of International Officers of the IBT is being conducted by a secret mail ballot sent to all IBT members. In accordance with the 1991 International Union Officer Election Plan, as approved by the Federal Court, ballots were mailed in early November and must be returned to the Election Officer on or before 12 noon on Tuesday, December 10, 1991. Under the procedures implemented by the Election Officer IBT members who have not received their ballots, or who wish a duplicate ballot, may request a ballot by contacting the Election Office at a special toll free number established for that purpose, i.e., 1-800-IBT-VOTE.

Members calling this number requesting a duplicate ballot are asked, *inter alia*, the reason for their request.<sup>1</sup> Duplicate ballots are not withheld from members simply because they state that they have "changed their mind" or want to "change their vote" as the reason for requesting a duplicate ballot.<sup>2</sup> Under the Election Officer's procedures for processing duplicate ballots which are received by the Election Office in a timely manner, i.e., on or before 12 noon on December 10, 1991, the ballot with the latter post mark will be counted. If both or one of the post marks are/is not legible so that the Election Officer is unable to determine which was the later mailed ballot, the ballots will be voided.

In his administration of the Election Rules, the Election Officer has consistently held that the date of a mail ballot election is the date and time on which the ballots must

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<sup>1</sup> The Election Officer has implemented security procedures to insure that duplicate ballot requests are not fraudulent and that all duplicates distributed are sent to the IBT member entitled to cast that vote. Obviously, the Election Officer will not reveal the methods utilized for these purposes.

<sup>2</sup> Other possible reasons for requesting a duplicate ballot range from concerns by the member that they improperly marked the ballot, voted for too few or too many candidates, failed to follow instructions regarding the use of the secret ballot envelope or signed or indicated their identity on the ballot to statements that the ballot was lost, inadvertently discarded or that the ballot had been destroyed.

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be returned to the post office box designated by the Election Officer. See, e.g., *Rules* Article XII, §3(c)(7). Implicit in this application of the *Rules* is the recognition that a voter has until the return date to make his choice or change his choice of candidate(s). Such application of the *Rules* is consistent with the practice followed in all elections, even in in person balloting. In a walk-in election, a voter having once marked his ballot may decide to change his vote; if he does so, the voter has the right to request that a new ballot be issued. The first ballot is marked as spoiled and the second ballot marked by the voter, with his changed vote, is counted.

These same rules are applied here by the Election Officer; the date of the 1991 IBT International Union officer election is December 10, 1991; until that date -- the date when the ballot is in effect cast -- the voter has the right to change his mind and request a duplicate ballot to effectuate that change. The Election Officer notes it is not unusual for a voter to change his mind with respect to a choice of candidate(s) because of last minute campaigning and to change his vote accordingly.

The Election Officer would further note that no other interpretation can be practically applied. It is beyond cavil that IBT members are entitled to obtain a duplicate ballot if they improperly marked their ballot -- such as voting for too few or too many candidates -- even if they only learn of their error after the ballot is mailed. Were the Election Officer to deny duplicate ballots to members seeking duplicate ballots because they have changed their candidate preference(s), the member would invariably supply some other reason for seeking the duplicate ballot. It is impossible to discern whether the reason provided by the member for requesting a duplicate ballot is truthful; to do so would require identifying the ballots cast with the member who cast them, undermining the secrecy of the election process mandated not only by the March 14, 1989 Consent Order and the *Rules* but also by the Labor Management Reporting and Disclosure Act.

Accordingly, it is not violative of the *Rules* for a voter, who has already mailed his ballot, to seek a duplicate ballot in order to express his new choice of candidate(s) as long as this change of sympathy is not coerced or fraudulent.

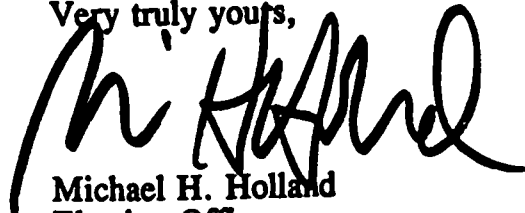
For the forgoing reasons the instant protest is DENIED.

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

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be served on 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, IBT, 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  
Election Officer

cc: Frederick B. Lacey, Independent Administrator  
Ron Carey  
c/o Richard Gilberg, Esquire

IN RE:	:	91 - Elec. App. - 243 (SA)
WALTER SHEA	:	
and	:	DECISION OF THE
CHRIS SCOTT	:	INDEPENDENT ADMINISTRATOR
R.V. DURHAM UNITY TEAM	:	

This matter arises as an appeal from the Election Officer's decision in Case No. P-1124-IBT. By consent, the parties chose to have the matter resolved "on the papers." As usual, the Election Officer submitted a written summary in accordance with Article XI, Section 1.a.(7) of Rules For the IBT International Union Delegate and Officer Election ("Election Rules"). In addition, Hugh J. Beins, on behalf of the R.V. Durham Unity Team ("Durham Team"), submitted a letter indicating his agreement with the Election Officer's decision. Lastly, Patrick J. Szymanski submitted a "Statement Of Position By Shea-Ligurotis Action Team."

This protest concerns a memorandum distributed by Chris Scott, the Campaign Director for the Durham Team, to certain "Local Union Officers." In his memo, Mr. Scott stated that "Dan Ligurotis was indicted today for second-degree murder and obstruction of justice." The memo also states that a vote for Shea-Ligurotis is a vote for "Carey/TDU," that Union officers who want the Union to succeed "shudder at the thought of a Carey/TDU victory," and that Union officials in various cities have recently announced their

support for Durham. The memo continues that "[i]t's not too late to shift, even if you previously supported Shea-Ligurotis." The memo closes by stating:

If you or your members have mismarked a ballot, you can obtain a new ballot by calling 1-800-IBT-VOTE. The ballot with the latest postmark will be counted.

The Shea-Ligurotis Slate alleges that Mr. Scott's memo "is a blatant interference with the election process." It is further argued that, "[n]othing in the Election Rules is designed to allow members to obtain a new ballot for the sole purpose of changing a ballot that was validly and properly cast." See November 26, 1991, Election Protest letter to the Election Officer. The objections raised by the Shea-Ligurotis Slate are without merit.

The selection of IBT International Union Officers is being conducted by a secret mail ballot election. On September 11, 1991, the Honorable David N. Edelstein approved the Election Officer's 1991 International Union Officer Election Plan (the "Election Plan"). In accordance with the Election Plan, ballots were mailed in early November and must be returned to the Election Officer on or before 12:00 Noon on Tuesday, December 10, 1991. Under the procedures implemented by the Election Officer, IBT members who have not received their ballots, or who wish a duplicate ballot, may request a ballot by contacting the Election Office at a special toll-free number established for that purpose -- 1-800-IBT-VOTE.

The Election Officer has implemented security procedures to insure that duplicate ballot requests are not fraudulent and that

all duplicates distributed are sent to IBT members entitled to vote. Obviously, the Election Officer, to preserve his security procedures, has not revealed the details of those procedures. Nonetheless, the Election Officer has noted that members calling the toll-free number requesting a duplicate ballot are asked, among other questions, the reasons for the request. Duplicate ballots are not withheld from members simply because they state that they have "changed their mind" or want to "change their vote" as the reason for requesting a duplicate ballot.

Under the Election Officer's procedures for processing duplicate ballots, "the ballot with the latest postmark shall be counted and the other(s) voided." Election Rules, Article XII, Section 5.(e). The Election Rules further contemplate that the deadline for voting in the mail ballot election "shall be noon of the day which is set as the return or voting date." See Election Rules, Article XII, Section 3.(7). Given these two provisions, it is clear that the Election Rules recognize that IBT members have until 12:00 Noon on December 10, 1991, to make their choice or change their choice of candidates.

The Election Plan is consistent with the Election Rules insofar as it contemplates that voters who have mistakenly marked their ballots will be entitled to a second ballot. See, e.g., September 4, 1991, transcript of proceeding before Judge Edelstein at p. 17, at which the Election Officer explains that, "[o]n all of our instructions we provide the toll-free numbers for people [who



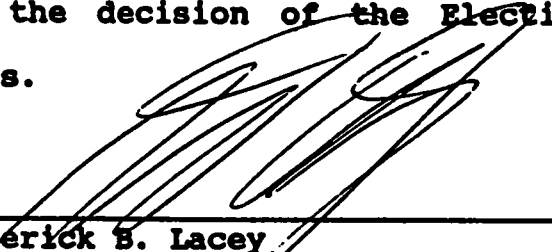
have] voted their ballots by mistake . . . ." A voter who has changed his mind after marking a ballot, but before the deadline for return of the ballot, can be fairly said to have mistakenly marked his ballot. See The America Heritage Dictionary, 2d College Edition wherein "mistaken" is defined as "[w]rong or incorrect in opinion, understanding or perception." Thus, a voter who has changed his or her mind is entitled to a second ballot and the opportunity to vote as he/she chooses.

To accept any other interpretation would be to invite the tainting of the secret ballot election. Adopting the arguments of the Shea-Ligurotis Slate would inevitably lead to a procedure whereby voters would be required to explain their votes and the reasons for their request for a duplicate ballot.

As concluded by the Election Officer in his Summary:

Accordingly, Mr. Scott did not mislead the recipients of his campaign memorandum of November 25, 1991, as to the procedures available to them if they choose to follow them.

For the foregoing reasons, the decision of the Election Officer is affirmed in all respects.



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Frederick B. Lacey  
Independent Administrator  
By: Stuart Alderoty, Designee

Dated: December 9, 1991