



OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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Michael H Holland
Election Officer

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Chicago, IL 60604
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January 22, 1991

VIA UPS OVERNIGHT

Gary Clark
270 Kerry Lane
Highland, MI 48357

James F. Esser
President
IBT Local Union 243
2741 Trumbull Ave.
Detroit, MI 48216

Robert Naslanic
441 Clair
Garden City, MI 48135

United Parcel Service
29855 Schoolcraft
Livonia, MI 48150

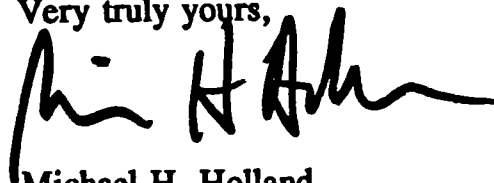
Re: Election Office Case No. P-187-LU243-MGN

Gentlemen:

This is to inform you that the Election Officer has decided, pursuant to his authority under under Article XI, § 1 (a)(4)(b) of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") to defer ruling on the above referenced protest until after the Local 243 election. This protest will be resolved in accordance with the procedures set forth in Article XI, § 1(b) of the *Rules*.

Thank you for your cooperation in this matter.

Very truly yours,



Michael H Holland
Election Officer

MHH/mjv

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cc. James De Haan, Regional Coordinator
7192 Pebble Park Dr.
West Bloomfield, MI 48322
Telephone: 313-626-4240
Facsimile: 313-932-2544

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April 4, 1991

VIA UPS OVERNIGHT

Robert Naslanic
441 Clair
Garden City, Michigan 48135

Lawrence A. Dyer
25043 Christopher Street
Mount Clemens, Michigan 48045

Barney Taylor
c/o Right To Vote Slate
9901 Hicks Road
Livonia, Michigan 48150

Joe W. Clark
c/o Clark/Bochniak Team
16076 Liberal Road
Detroit, Michigan 48205

Allen Pope
11201 Fairfield Road
Livonia, Michigan 48150

Brenda Dotson Hansknecht
20138 Wacama Road
Detroit, Michigan 48203

David Staiger
245 Brookridge
Ann Arbor, Michigan 48103

United Parcel Service
29855 Schoolcraft
Livonia, Michigan 48150

James F. Esser
President
IBT Local Union 243
2741 Trumbull Avenue
Detroit, Michigan 48216

Gary C. Clark
c/o Rank & File Teamsters
270 Kerry Lane
Highland, Michigan 48357

Frank Gionnik
31604 Tecla Drive
Warren, Michigan 48093

Jerry St. Onge
29611 Ross Road
Redford, Michigan 48239

David Jenner
17810 Topefer
East Detroit, Michigan 48021

Jim Cianciola
3351 Richmond
Lincoln Park, Michigan 48146

Robert Naslanic
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Re: Election Office Case Nos.

P-195-LU243-MGN
Post-21-LU243-MGN

Gentlemen:

This matter involves a pre-election protest which was deferred and a post-election protest consisting of two parts. With regard to Election Office Case No. ~~P-195-LU243-MGN~~ P-195-LU243-MGN, a pre-election protest was filed by Robert Naslanic on December 29, 1990 pursuant to Article XI, Section 1 of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*"), alleging that his name was misspelled on the ballot as "Haslanic" rather than "Naslanic", and that United Parcel Service ("UPS") interrupted his distribution of literature at the Livonia work-site. This pre-election protest was deferred by Election Officer on January 22, 1991, and will be decided by the Election Officer in a separate opinion issued later.¹

With regard to Post-21-LU243-MGN, a post-election protest was filed by Mr. Lawrence Dyer on February 7, 1991 pursuant to the *Rules*, and supplemented by Mr. Dave Staiger on February 8, 1991, asserting that employees of the Union's Health and Welfare Fund were impermissibly permitted to vote. Since the number of their votes was greater than the margin between the winning candidate with the lowest number of votes and the losing candidate with the greatest number of votes, they seek a rerun election.

Mr. Dyer also contends that he is entitled to a recount of ballots since he lost the delegate election by only one vote. With respect to this portion of the protest, Mr. Dyer seeks a recount, but does not request a rerun of the election.

On February 8, 1991, Mr. Jim "Cinci" Cianciola, a member of the Esser/Cinci slate also filed a post-election protest asserting that the opposing R.A.F.T. slate mailed campaign literature directly to members of the Local rather than through the Local. He alleges that the R.A.F.T. slate obtained this list either from the national campaign of Ron Carey, or if not from Carey, from employers, and that this constituted an unfair financial and campaign advantage to the R.A.F.T. slate.

Ballots were mailed to 4,278 members on December 27, 1990. 1,130 ballots were cast. Four delegates and three alternates were to be selected. Four slates were on the ballot. The results between the two slates with the highest number of votes, the Esser/Cinci slate, which included the Local Union officers, and the R A F T (Rank & File Teamster) slate were as follows:

¹A pre-election protest was filed by Gary Clark on December 27, 1990 in P-187-LU243-MGN, but was subsequently withdrawn by Mr. Clark.

Robert Naslanic
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Esser/Cinci slate:

<u>Delegate</u>	<u>Votes Received</u>	<u>Alternate</u>	<u>Votes Received</u>
Gregory T. Lowran	429	Rick Oliver	444
James Esser	422	Betty Cardinal	420
Leon Cooper	421	David Witulski	418
Jim "Cinci" Cianciola	410		

R.A.F.T. slate:

<u>Delegate</u>	<u>Votes Received</u>	<u>Alternate</u>	<u>Votes Received</u>
Gary L. Clark	445	Mary Knox	436
Gerald Gallagher	439	Gerald O' Donohue	419
Larry Dyer	421	Robert Naslanic	414
Dave Staiger	398		

The initial counting of the ballots took place on January 18, 1991, and because challenged ballots had to be resolved, a second day of counting took place on February 6, 1991.

With regard to the post-election protest filed on February 7, 1991 by Lawrence A. Dyer, and supplemented on February 8, 1991 by Mr. Dave Staiger of the R.A.F.T. Slate, the first allegation is that employees working for the Local's Health and Welfare Fund were permitted to vote in the delegate election and that the election should be rerun since Mr. Dyer lost by only a single vote. As the basis for their contention that the employees working for the Local's Health and Welfare Fund were ineligible to vote, they point to a decision rendered by an Administrative Law Judge of the National Labor Relations Board with regard to the employees working for the Michigan Conference of Teamsters Welfare Fund. That decision was rendered by Administrative Law Judge Irwin Kaplan on February 5, 1991, one day prior to the second ballot count; neither the Election Officer nor the protestors were aware of this decision of the ALJ. Michigan Conference of Teamsters Welfare Fund and Local 243 IBT, v. Elaine Clemmon-Smith, Case Nos. 7-CA-29831(2) and 7-CB-8079-(2).

In that decision, Administrative Law Judge Kaplan found:

The Respondent Fund, by requiring its non-supervisory salaried employees to become members of Respondent Local 243 as a condition of employment and deducting union dues from the wages of those employees and remitting said dues to said Respondent Local 243, it thereby engaged in conduct in violation of Section 8 (a) (1),(2) and (3) of the Act.

Slip op , p. 7.² Because employees of the Welfare Fund may not be required to be members of the Local does not mean that they may not voluntarily be members of the Union. The decision does not prohibit them from joining the Local and, if they join, enjoying all rights and privileges of Union members, including the right to vote.

The 13 members of the Welfare Fund who voted in the election were in fact members in good standing at the time of the election. They chose to vote and their voting was not coerced. As members, they had a right to vote in Local 243's election. Thus, there is no violation in the counting of the votes of persons who were members at the time of the election. Accordingly, the protest filed by Mr. Dyer and supplemented by Mr. Staiger on behalf of the R.A.F.T. slate with regard to the Welfare Fund employees is DENIED.

The R.A.F.T. slate members, however, raise an additional question concerning the correctness of the tabulation of the votes in view of the mere one vote margin. Having denied their request for a new election with a new determination of eligibility with respect to the Welfare Fund workers does not preclude consideration by the Election Officer of their request to retabulate the votes already received to insure that the one vote margin ascertained at the time of the count was indeed accurate. To insure that the election is accurate, and to see to it that all participants are fully confident in the accuracy of the actual vote tabulation, the Election Officer has decided to grant a retabulation of the votes already cast in the delegate and alternate delegate election. It should be emphasized that this is not a rerun of the delegate or alternate delegate race, nor is it a recounting of ballots with new determinations made as to the eligibility of those ballots. This is merely a granting of a retabulation of already eligible votes as determined at the time of the initial election count by recounting those ballots once again to make sure that the vote count is completely accurate. The Election Officer, in accordance with Article XI, § 3 of the *Rules*, will determine the date of the recount of ballots and will notify all of the candidates or their slate representative.

A post-election protest was also filed on February 8, 1991 by Mr. Jim Cianciola, a member of the Esser/Cinci Slate. He alleges that the R.A.F.T. slate mailed campaign literature directly to the members, rather than by requesting a mailing to be done by the Local Union. He claims that since R.A.F.T. obtained the mailing list either from the national campaign of Ron Carey, or if not from Carey, from employers, this constituted an unfair financial and campaign advantage for the R.A.F.T. slate.

The Election Officer investigation has determined that the R.A.F.T. slate obtained the membership mailing list from the campaign of Ron Carey, an accredited candidate for International General President. The propriety of a membership being obtained in

²While this opinion by the Administrative Law Judge may be appealed; for purposes of this decision, it will be assumed, arguendo, that the finding that members of the Welfare Fund may not be coerced to become members is taken as definitive.

this manner was involved in Election Office Case No. P-397-LU1145-NCE. That decision was affirmed by the Independent Administrator in Case No. 91-Elec.App.-79 (SA).

The determination in Election Office Case No. P-397-LU1145-NCE recounts that Judge David N. Edelstein in a decision rendered in the United States District Court for the Southern District of New York on July 10, 1990, pursuant to the Consent Decree, required that accredited candidates, such as Mr. Carey, receive a current membership list from the IBT. Thereafter, and in compliance with Judge Edelstein's decision, the Election Officer on August 23, 1990 issued an "Advisory on Membership List Distribution to Accredited Candidates" in which it specifically was stated:

Use for any purpose other than advancing the accredited candidate's campaign for nomination and/or election as an International Union Officer will constitute misuse of the membership list Use of the list to support delegate and alternate delegate candidates will not constitute misuse of the membership list since such delegate and alternate delegates, if elected, may advance the campaign of the accredited candidate by their votes at the 1991 IBT International Convention. [emphasis supplied]

Independent Administrator Lacey found the use by delegate and alternate delegate candidates of a list supplied by the Carey campaign to be proper and consistent with the Order of Judge Lacey which was embodied in the *Rules*, Article VIII, § 2 (a). Since the R A F.T slate did in fact receive its campaign mailing list from the Carey campaign and used it in a manner consistent with the *Rules*, there is no violation.

Accordingly, the protest of Mr. Cianciola is DENIED.

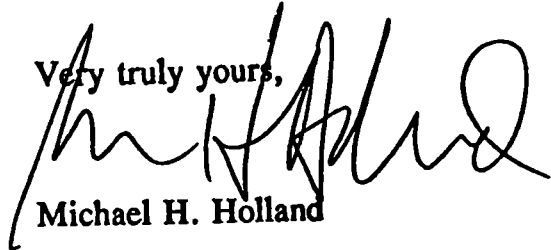
Accordingly, with regard to the delegate and alternate delegate election, the Election Officer will conduct a retabulation of the already eligible votes that have been cast. The delegate election will not be rerun nor will there be a redetermination of the eligibility of voters who cast ballots in that election, additionally, the Election Officer will decide deferred Election Office Case No. P-195-LU243-MGN at a later date.

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 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,

Robert Naslanic
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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,

A handwritten signature in black ink, appearing to read "Michael H. Holland", written over the typed name below.

Michael H. Holland

MHH/mca

cc: Frederick B. Lacey, Independent Administrator
James De Haan, Regional Coordinator