



OFFICE OF THE ELECTION OFFICER
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April 4, 1991

VIA UPS OVERNIGHT

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Lincoln Park, Michigan 48146

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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~~, 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.

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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 7² 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.

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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

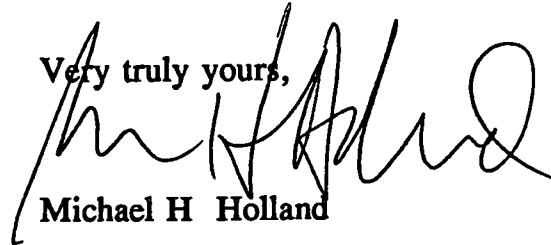
Accordingly, with regard to the delegate and alternate delegate election, the Election Officer will conduct a retabulation of the already eligible votes that have been cast The delegate election will not be rerun nor will there be a redetermination of the eligibility of voters who cast ballots in that 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,

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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

IN RE:

LAWRENCE DYER
DAVID STAIGER

and

IBT LOCAL UNION NO. 243

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: 91 - Elec. App. - 127 (SA)
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DECISION OF THE
INDEPENDENT
ADMINISTRATOR

This matter arises out of a appeal from an April 4, 1991, decision of the Election Officer in Case No. POST-21-LU243-MGN. A hearing was held before me by way of telephone conference on April 11, 1991, at which the following persons were heard: the complainants, Lawrence Dyer and David Staiger; John Sullivan and Barbara Hillman on behalf of the Election Officer; and Frank Kortsch, an attorney on behalf of Local 243.

In their protest, the complainants alleged: (1) that the vote count in the Delegate Election was so close that a re-count is warranted; and (2) that because thirteen allegedly ineligible members were allowed to vote, a rerun election is required.

The complainants are both members of Local 243 and they are both candidates for delegate to the 1991 Convention on the "Rank-and-File Teamsters Slate." In its election, the members of Local 243 elected four delegates and three alternates. Four slates were on the ballot. The election was conducted by way of mail ballot. The ballots were mailed on December 27, 1990. There were 4,278 ballots mailed. Of these, 1,130 were returned. Ballots were

counted initially on January 18, 1991. After challenged ballots were resolved, a second day of counting took place on February 6, 1991.

The members elected candidates from both the slate composed of incumbent Local officers and the Rank-and-File Teamsters Slate. Two delegates were elected from the Rank-and-File Teamster Slate and two delegates were elected from the incumbent's slate. Only one vote separated the lowest-ranking winning candidate from the incumbent slate (James Esser) from Mr. Dyer, the highest ranking losing candidate from the Rank-and-File Teamster Slate. Mr. Dyer garnered 421 votes,¹ whereas Mr. Esser received 422 votes.

The Election Officer agreed that, under the circumstances, a re-count of the votes cast was in order both to confirm that the tabulation was accurate and to insure that all interested parties were fully confident of that accuracy. That retabulation has yet to take place. The Election Officer's willingness to go forward with the retabulation, renders the first portion of complainants' protest moot.

As noted, the second portion of the protest involves 13 individuals who voted in the election. The complainants argue that these individuals were ineligible to vote, and thus, their votes should not have been counted.

As explained by the Election Officer in his Summary:

The Election Rules do not specifically establish requirements for eligibility to vote in the elections for

¹ A member of the incumbent's slate, Leon Cooper also received 421 votes, thus tying Mr. Dyer.

delegate and alternate delegate to the 1991 IBT Convention and for International officers. The intent of the Rules is to allow any member of the IBT who can be considered an active member in good standing to exercise his or her vote. To determine whether a member has maintained good standing, the Election Officer will look to applicable provisions of the IBT Constitution.

Article XX, Section 4(c) of the IBT Constitution provides that to be eligible to vote in local union elections, a member must have dues paid through the month prior to the month in which the election is held.

Further, membership requires employment at the craft within the jurisdiction of the Local Union.

The 13 individuals in question work for Local 243's Health and Welfare Fund (the "Fund"). It is not disputed that employment with the Fund satisfies the requirement of employment at the craft.

In contending that the Fund employees are nevertheless ineligible under the Election Rules, the complainants rely on a decision of the National Labor Relations Board ("NLRB") issued on February 5, 1991. In Michigan Conference of Teamsters Welfare Fund v. IBT Local No. 243, et al., Case Nos. 7-CA-29831(2) and 7-CB8079-(2), an NLRB Administrative Law Judge (the "ALJ") addressed the question of whether the Fund violated the National Labor Relations Act (the "Act") by compelling its employees to become members of Local 243. The ALJ found that the Fund had indeed committed unfair labor practices by requiring its employees to become members of Local 243 and by deducting dues from the employees and remitting the same to the Local. The ALJ also found that the Local had committed the same unfair labor practices by accepting the dues.

As a remedy the ALJ ordered the Fund and the Local to cease and desist its requiring the Fund employees to become members of

the Local. In addition, the ALJ ordered that the employees be reimbursed for all dues paid for the six months prior to the filing of their unfair labor practice complaint.

Local 243 took exception with the ALJ's order and appealed the same. Thus, the ALJ's decision has yet to be adopted by the NLRB and none of the remedies have been complied with.

For purposes of determining the complainants protest, the Election Officer accepted the ALJ's decision as a correct and final statement of the state of the law regarding the status of compulsory membership of employees of the Fund. For purposes of this appeal I also accept the NLRB's decision. As explained by the Election Officer in his Summary, however:

A ruling that employees of the welfare fund may not be required to belong to the Local does not mean that they may not be permitted to become members if they so choose. Nor does the decision hold that if such employees voluntarily join the union, they should be deprived of any of the rights and privileges of membership, not the least of which is the right to vote in union elections.

In this case, the 13 challenged members had maintained the requisite good standing in the Local at the time of the election, and were members in good standing at the time they exercised their right to vote. There is no evidence that any of the 13 employees has taken steps to withdraw from membership as a result of the NLRB decision. If they choose to do so in the future, their non-member status will preclude them from voting in union elections in the future. However, as to the votes they cast, they must be deemed valid votes voluntarily exercised by members who were members in good standing and eligible to vote at the time. There is no basis under the Election Rules for retroactively disenfranchising them at this time. In addition, as noted, the February 5, 1991, decision of the NLRB has been appealed and has yet to take effect.

For the reasons expressed by the Election Officer, his decision is affirmed.

Some collateral issues which were raised by the complainants at the hearing require comment. First, the complainants argue that the Election Officer should have issued a decision on eligibility in such a time frame as to afford the complainants the right to appeal that decision before the vote was counted. In making this argument the complainants ignore the Election Rules and the practicalities facing the Election Officer in completing a ballot count. Article XII, Section 5.d. of the Election Rules provides:

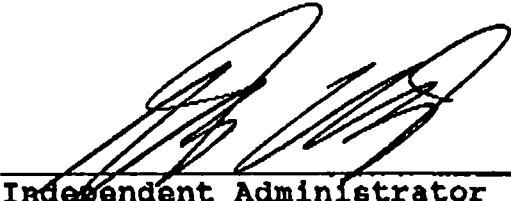
With respect to delegate elections, all unchallenged ballots shall be counted first. In the event that any candidate attains a margin of victory greater than the number of challenged ballots left to be counted, the count shall cease with respect to such candidate. However, if such is not the case for all candidates, all challenges shall be resolved and those challenged ballots resolved in favor of eligibility counted. . . .

In this case, the 13 ballots in question were challenged during the count. The Election Officer resolved the challenges in favor of eligibility and thus included the challenged ballots in the count. The Election Officer's actions were consistent with the Election Rules. The Election Rules do not contemplate appeals from resolutions of challenges to ballots. In addition, a protest was filed regarding the 13 ballots after the count. That protest is the subject of this appeal and is being properly considered as a post-election protest.

What the complainants were really suggesting here is that the count should have been delayed to afford them the opportunity to resolve their eligibility challenge. The Election Rules do not

contemplate such a delay. Moreover, such delays would only serve to frustrate and unduly burden the entire election process.

The complainants also suggest that the 13 ballots should have been segregated so that if they prevailed in their eligibility challenge, a determination could be made whether or not the 13 ballots "may have affected the outcome of the election." Given the fact that the complainants did not prevail in their eligibility challenge this argument is moot. More importantly, however, the segregation of any ballots would defeat the secrecy of the ballots and would be repugnant to the Election Rules and the goals of the March 14, 1989 Consent Order.



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

Dated: April 16, 1991