



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

Michael H Holland
Election Officer

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

February 7, 1991

VIA UPS OVERNIGHT

David Perry
820 Lawn Court
Tracy, CA 95376

Joseph DiPrisco
Secretary-Treasurer
IBT Local Union 302
492 C Street, Suite A
Hayward, CA 94541

Brian Beaver
Secretary-Treasurer
IBT Local Union 624
1371 Neotomas Avenue
Santa Rosa, CA 94505

Re: Election Office Case No. P-427-LU302-CSF

Gentlemen:

On January 3, 1991, a pre-election protest has been filed pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*"). The complainant, Mr. David Perry, is a Business Agent and a candidate for delegate in IBT Local 302. He protests the decision of Teamsters Joint Council 7 to allow the transfer of approximately 120 members of Local 302 into Local 624. Mr. Perry is not among the members being transferred, but claims that his base of political support is in that group.

The investigation reveals that the members in question are janitorial employees who were organized by the IBT in 1984. Although, these janitorial employees would appear to be within the jurisdiction of Local 624, Local 624 was not interested in adding new members at the time these employees were organized, the members were added to Local 302 instead. Last year, Local 624 sought the transfer of these members to its jurisdiction and IBT Joint Council 7 approved this transfer in January 1991. Local 302 is opposed the transfer. Under Article XII, §21 of the IBT Constitution, Local 302 may appeal this decision of the Joint Council to the General President and General Executive Board within 15 days of the decision.

David Perry
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The investigation also revealed that Local 624 has already had its meeting to nominate candidates for delegate to the International Convention. Local 302 has not yet held its nomination meeting. The transfer of Local 302 members, if upheld, may therefore effectively disenfranchise those voters in the nomination and election of delegates. This action would deprive these members of their political right to run for delegate, nominate and second delegate candidates, vote for and campaign for candidates, and to be represented by delegates in whose election they have participated. See *Rules*, Article VIII, §10. The *Rules* do not allow the restructuring of a Local to have this result. Cf. *Rules*, Article IV, §2 (e) (allowing seating of delegates to Convention in restructured Local where necessary to prevent disenfranchising of Local members)

For these reasons, it is the decision of the Election Officer to allow the transferred members of Local 302 to participate in the nomination and election of delegates from Local 302. Further to the extent that the transfer would otherwise affect to total complement or number of delegates to the 1991 IBT International Convention from either Local 302 or Local 624, such charge will be disregarded. The protest is GRANTED in accordance with, and on the basis of the foregoing.

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, 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

MHH/acm

cc Frederick B. Lacey, Independent Administrator
Donald Twohey, Regional Coordinator
Weldon L. Mathis, General Secretary-Treasurer, IBT
Chuck Mack, President, IBT Joint Council 7
150 Executive Park Blvd, Suite 2900
San Francisco, CA 94134

302/KSE

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IN RE:

DAVID PERRY

and

BRIAN BEAVER,
IBT LOCAL UNION NO. 624.

91 - Elec. App. - 74 (SA)

DECISION OF THE
INDEPENDENT ADMINISTRATOR

This matter arises out of an appeal from a February 7, 1991, decision of the Election Officer on a pre-election protest (Case No. ~~E-427-LU30~~).¹ A hearing was held before me on February 14, 1991, by way of teleconference at which the following persons were heard: John Sullivan, for the Election Officer; Donald Twohey, the Regional Coordinator; David Perry, the Complainant;

¹ Local 624 argues that since the Election Officer did not issue his decision within the five day period allotted by virtue of Article XI, Section 1.a.(4) of the Rules For The IBT International Union Delegate And Office Election (the "Election Rules"), the matter should be considered closed. The Election Officer concedes that his decision issue seven calendar days (including 2 weekend days) following the receipt of the protest. Local 624's reliance on the timeliness of the Election Officer's decision is meritless. It would be inequitable to dismiss a timely and meritorious protest for a delay that was not the fault of the protestor. As stated by the Election Officer, his "adherence to the time constraints of the [Election] Rules need not be so punctilious as to work so unjust a result. Neither Mr. Beaver nor Local 624 was harmed by the timing of the Election Officer's decision." See also In Re: Maheras, 91 - Elec. App. - 53 (SA).

Brian Beaver, Secretary-Treasurer of Local 624 and Joseph DiPrisco, Secretary-Treasurer of Local 302.

At issue is a decision of IBT Joint Council 7 to allow the transfer of approximately 120 members of Local 302 into Local 624. Mr. Perry, a Business Agent and a candidate for delegate in Local 302, is not among the members being transferred. In his pre-election protest, Mr. Perry claimed that the base of his political support was in the group that was transferred.

Local 624 held its nominations meeting on January 24, 1991, prior to the effective date of the transfer. The meeting for Local 302 was held on February 12, 1991, after the transfer. Transferred members participated in the Local 302 nominations meeting. In fact, the complainant was either nominated or seconded² by a member who was recently been transferred into Local 624. The Election Officer concluded that the transfer may disenfranchise those members who were transferred into Local 624. I agree. As stated by the Election Officer at pp. 4-5 of his Summary:

Although the election in Local 624 has not been concluded, these [transferred] members' rights to participate even in this portion of the process, i.e., to vote for and campaign for candidates, and be represented by delegates in whose election they have participated would be seriously diluted. The election would be among candidates in whose nomination the newly transferred members had not participated and of whom they would have little knowledge.

² Mr. Perry claimed that the transferred member had nominated him. Local 302 claimed that the transferred member had seconded Mr. Perry.

To insure that the transferred members are permitted to exercise their political rights guaranteed by the Election Rules, the Election Officer ruled that they would be permitted to participate in the nomination and election of delegates for Local 302.³ The Election Officer further found that to the extent the transfer would affect the total number of delegates to the 1991 IBT International Convention representing Local 624, such change will be disregarded.⁴


That the transferred members would be disenfranchised from the delegate election process if not permitted to participate in Local 302's elections is clear. Thus, the Election Officer's ruling that the transferred members can participate in the Local 302's election is the proper remedy and is affirmed. To the extent not done so already, the Election Officer should take steps to insure that the transferred members are notified of their right to participate in the Local 302 elections.

Given that the transferred members will not participate in Local 624's elections, it would serve no purpose to count their numbers in calculating Local 624's delegate strength. Accordingly,

³ Although it was agreed at the hearing that the transferred members were never notified that they could participate in Local 302's nomination meeting, it is clear that at least some of the transferred members did, in fact, participate in that meeting. See p. 2, supra.

⁴ If the transfer of the members were considered, Local 624 would be permitted to send four delegates to the Convention as compared to the three they would be permitted to send if the transferred members were not counted.

the Election Officer's ruling that Local 624's delegate complement will not increase as a result of the transfer is also affirmed.



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

Dated: February 19, 1991.