



OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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Washington, DC 20001

Michael H Holland
Election Officer

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April 16, 1991

VIA UPS OVERNIGHT

Gary L Gregory
9601 Bakeway Dr
Indianapolis, IN 46231

John N Neal
President
IBT Local Union 135
1233 Shelby St
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Donald E Shaw
155 E Alliance Rd
Anderson, IN 46013

Glen Ingram
2001 Spruce St
Muncie, IN 47302

Danny L Barton
5335 Hillrise Dr
Indianapolis, IN 46237

Dick Spurgeon
6115 Augusta Dr. N
Indianapolis, IN 46224

Re: Election Office Case No. P-606-LU135-SCE
P-545-LU135-SCE
P-552-LU135-SCE
P-585-LU135-SCE
P-582-LU135-SCE

Gentlemen

The above referenced protests were timely filed by Gary L Gregory, Dick Spurgeon and Danny L Barton under Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") Each of these protest cases was deferred by the Election Officer for post election review The election (ballot count) for Local 135 was conducted on March 6, 1991. Twenty-two delegates and eight alternate delegates were to be elected Two full slates plus independents appeared on the ballot

586 votes separated the winning delegate candidate with the lowest number of votes, Robert B Binversie, from the losing candidate with the greatest number of votes, John D Kirby. The tally was as follows

Gary L. Gregory
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John Neal Slate
Delegate Candidates

	<u>Votes</u>
John Neal	3081-
James N. Long	3028 -
Joseph E. Amick, Sr.	3020-
David L Smith	3015-
Victor Dale Thompson	3013-
Michael Morris	3013-
Ronald A Foster	3013-
Ralph D. Brook	3012-
John L White	3011-
Raymond E. Hines	3010-
Robert L Analker	3009-
Danny L Barton	3007-
Charles S Humphrey	3007-
Gerald L King	3007-
Michael A Lumpkin	3003-
William D Stinnett	3003-
Douglas L. Schmidt	3003-
Ralph N Neal	2996+
Carl E Trader	2993+
James R Caulk	2992
Dudley E Deppe	2987
Robert B Binversie	2978

John Neal Slate Alternate Delegate Candidates

David R. Young	2997 *
Tony E Sanders	2996 *
Jimmy R Reagan	2995 *
Terry L Abbott	2990 *
Thomas R Lynch	2988 ✓
Michael W Watson	2978-
James H Pike	2976
Bernard J Lyons	2973

Indiana Teamsters for Ron Carey Slate Delegate Candidates

John D Kirby	2392
Samuel C Frazier	2391
Larry R Adams	2380
William R Runyon	2380
Stephen Longworth	2379
Russ Warren	2379
Joseph G McDonald	2378

Gary L. Gregory
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Vinton R Trump	2376
Thomas May, Sr.	2374
Eddie A. Johnson	2372
Kenneth D Gilbert, Jr	2370
Lawrence E Alden	2370
Pete F Angrick	2369
James E Grizzel	2367
David L. Epperson	2367
Dennis Hoy	2365
James E Hession	2360
Gary Kunkel	2359
Curtis M Doan	2353
Bobby Andrews	2352
Gary L Gregory	2326

Indiana Teamsters for Ron Carey Slate Alternate Delegate Candidates

Douglas Siler	2385
Gerald K Bradley	2384
Joseph Drury	2379
James D Helton	2379
Ronald H Greer	2375
Charles Richmond	2374
Mark I Cronkhite	2364
Louis R Hutmacher	2341

Independent Candidates

Donald E Shaw	123
Glen Ingram	116

The protests numbered P-545-LU135-SCE, P-552-LU135-SCE, P-582-LU135-SCE, and P-606-LU135-SCE raise the identical allegation that the incumbent slate, the John Neal Slate, used Union and employer resources for a campaign phone bank in violation of the *Rules*. The protests also allege that business agents campaigned with the use of cars owned by the Union, and were permitted by employers to engage in campaign activity that was not incidental to Union business.¹ In the protest numbered P-585, Danny Barton on behalf of the John Neal Slate alleges that the opposition slate, Indiana Teamsters for Ron Carey, interfered with the election process by representing to employers that its members were from the government in order to obtain phone

¹The protest in P-582-LU135-SCE also contends that the *Rules* were violated when, after the protests were filed, a member of the John Neal Slate called an employer to discuss the protests. The Election Officer investigation found no evidence of threats or intimidation by this slate member. Calling to discuss a protest is not a violation of the *Rules*.

numbers of IBT members employed by these employers, and used membership lists to which they were not entitled to under the *Rules* for campaign purposes Each of these issues is discussed below

I. P-585-LU135-SCE

Danny Barton, Secretary-Treasurer of Local 135, alleges that the Indiana Teamsters for Ron Carey Slate has a full membership list, including phone numbers, in violation of the *Rules*. He alleges further that members of the slate called various employers, claiming to be the government

The investigation shows that the Ron Carey Slate obtained the membership lists in question from accredited IBT General President candidate Ron Carey. Carey was provided the list by the Election Officer pursuant to Article VIII, § 2 (a) of the *Rules*. As stated in the Election Officer's Advisory on Membership List Distribution to Accredited Candidates, "Use of the list to support delegate and alternate delegate candidates will not constitute misuse of the membership list since such delegates and alternate delegates, if elected, may advance the campaign of the accredited candidate by their votes at the 1991 IBT International Convention " See also P-397-LU1145-NCE, affirmed 91-Elec App -79

Thus, the use of the membership list by the Indiana Teamsters for Ron Carey Slate does not constitute a violation of the *Rules*. The investigation shows additionally that phone numbers were not obtained from such membership list, the list does not include phone numbers. To the extent that members or supporters of the Indiana Teamsters for Ron Carey Slate obtained phone numbers, they did so from telephone directories or other publicly available sources. It is not a violation of the *Rules* to utilize materials publicly available to obtain either members' addresses or phone numbers

The staff of the Election Officer has made phone calls to various employers in the jurisdiction of this Local to investigate these protests. The Election Officer found no evidence that the members of the Indiana Teamsters for Ron Carey Slate have misrepresented themselves to the employers of Local 135's members. The Election Officer is the entity that has initiated such contact.

Other than the protest letter itself, no further evidence was provided by Mr Barton to support his protest, despite repeated requests of the Regional Coordinator. The *Rules* have not been violated by any of the conduct discussed in the foregoing. The protest is DENIED

II. P-545-LU135-SCE, P-552-LU135-SCE, P-606-LU135-SCE, P-582-LU135-SCE

The protests allege that the Local's business agents used Union automobiles to campaign. The protestors further contend that the business agents were given access to the interior of employers' facilities, e g , break rooms, lounges, and drivers rooms, for

purposes of campaigning when the access was unrelated to official Union business such as during the time periods the business agents were on vacation.

The evidence shows that approximately twenty-six business agents took vacation leave for varying periods of time from February 13 through February 22, 1991 to campaign for the John Neal Slate. The investigation did not substantiate, however, that Union owned cars were used by them for campaign purposes during this period. The evidence does show that the Local business agents did, on occasion, enjoy campaign access to drivers rooms, lounges, and break rooms during that period. The evidence also demonstrates, however, that the members of the Indiana Teamsters for Ron Carey Slate had similar access to such non-work areas whether or not they were employed by the employers whose members were the target of the particular campaign activity.

The Election Officer concludes that the evidence does not demonstrate that the Rules were violated when the business agents were granted access for their campaign activities. Further, there is no evidence that Union cars were used to facilitate campaigning. This aspect of the protest is DENIED.

Each of these protests also alleges that the John Neal slate operated a telephone bank and/or made phone calls using phone lists furnished by the employer and/or the Union. The protests were investigated by Regional Coordinator Peggy A. Hillman. In addition to the normal investigatory procedures, six depositions were taken.

The investigation discloses the following facts. The John Neal Slate installed 7 phones at the slate's campaign headquarters in Indianapolis and 2 phones at a campaign office in Marion for the purpose of contacting Local 135 members by phone. The evidence shows that the John Neal Slate rented the facilities which it used for the phone banks, the slate paid rent to the lessors. Phone service was obtained from Indiana Bell. The John Neal Slate purchased the phones and paid the phone company. Thus, there is no evidence of employer or Union payments with respect to the physical organization of the phone bank.

In addition, phone calls were made by members or supporters of the John Neal Slate other than at the phone banks. Again, there is evidence that these calls were subsidized by employer or Union funds.

The phone banks operated from February 14 to February 19, 1991. The offices were open throughout that period and various campaigners could stop by and use the phones. There is no evidence of an organized schedule for phoning. On February 19, 1991, Neal terminated the phone banks because of the filing of the instant protests and because many members objected to the phone calls. Thus the phones were thus operated for five days during the balloting period which commenced on February 11, 1991 when ballots were mailed.

It is undisputed that the content of the phone conversations was to inquire whether the member had received a ballot, to ask whether the member had voted, and to urge the member to vote for the John Neal Slate.

The protestors contend that the phone numbers were furnished to the supporters of Mr. Neal and the phone bank by employers and the Local Union. The Local refused the request Mr. Gregory made on behalf of the Indiana Teamsters for Ron Carey Slate for the members' phone numbers. The protestors contend that they were thereby denied equal access to the membership.

The Election Officer's staff contacted all employers whose names were furnished to it by the protestors. The Election Officer's investigation found that many employers had furnished the Local with the phone numbers of IBT members employed by them prior to the election. The Election Officer investigation determined that certain of these employers furnish phone numbers to the Local on a routine basis in order to facilitate the collective bargaining process, in addition, some updated the phone number list immediately prior to the Election.

The Local denies that it supplied official Local membership records for the phone bank campaign. The Local denies that its records contain phone numbers for the majority of the membership. The Local Union records reviewed by the Regional Coordinator, however, show that the records contain at least some members' phone numbers. Further, the investigation shows that at least some employers employing members under the jurisdiction of this Local furnished such members' phone numbers to the Local. Such employers did so, either as a routine matter or on an updated basis immediately prior to the election. Thus it is clear that the Local had a substantial number of phone numbers for Local 135 members which could have been used in connection with the phone bank campaign.

The Regional Coordinator deposed several John Neal Slate representatives who participated in the phone campaign to determine how they obtained the members' phone numbers they utilized in campaigning. While deposition testimony demonstrates that the lists were obtained in a variety of ways, the testimony also establishes that at least some of the phone numbers were obtained from employers by these representatives in their official capacity as business agents or employees of Local 135.

The Election Officer thus concludes that the evidence demonstrates that at least some Business Agents and Stewards who supported the John Neal Slate did use their official position to obtain phone numbers of Local 135 IBT members to be used for campaign purposes.² The opposition slate, not being composed of officers or business agents, did not have the same access to these phone numbers for campaign purposes nor did the Local provide such lists even after being requested to provide them.

² There is nothing improper, of course, about employers furnishing the Local with phone numbers to be used in the regular course of administering a collective bargaining agreement.

Assuming, therefore, that the *Rules* were violated by members and supporters of the John Neal Slate using their official Union positions to obtain phone numbers which were then used to further the campaign on behalf of the John Neal Slate, the Election Officer must still determine whether or not such improper use of the phone numbers affected the outcome of the Election. *Rules*, Article XI, § 1 (a)(4)(b) and § 1 (b)(2). Since the protests are being considered Post Election, the *Rules* as well as existing legal standards require that violations be evaluated in terms of their potential impact on the outcome of the election. For a violation to have affected an election, there must be a reasonable probability that the outcome or results of the election would have been different if the violation had not occurred. Wirtz v. Local Unions 410, 410A, 410B & 410C, International Union of Operating Engineers, 366 F 2d 438 (2nd Cir 1966), Dole v. Mailhandlers, Local 317, 132 LRRM 2299 (D C M D Alabama 1989)

The Election Officer investigation and evaluation of the results of this election reveals that the violation could not have affected the outcome of the election. There were 15,084 ballots mailed in the election, 5839 ballots, 39% of the ballots, were returned, 5530 valid ballots were counted. 586 votes separate the winning candidate with the lowest number of votes and the losing candidate with the highest number of votes.

The campaigning was vigorous by both slates. Each slate campaigned by mail, by personal communication, and through phone contact. International General President candidates Carey visited Indianapolis in mid-February, 1991 to campaign for the Indiana Teamsters for Ron Carey Slate. The Indiana Teamsters for Ron Carey Slate mailed at least two pieces of literature to all Local members.³ Additional leaflets were also distributed by the Indiana Teamsters for Carey Slate.

With respect to the effect of the phone bank, the evidence shows that while phone calls were made, relatively few members who were called were actually contacted.⁴ Additionally, the phone banks were in operation for only a short period of time.

Twenty-six business agents, all members or supporters of the John Neal Slate, each took up to two weeks of vacation to campaign.⁵ The vast bulk of the vacation time taken by the business agents was utilized for making personal, not phone contact, with

³ In fact, the Election Officer ordered the Local to finance a four page mailing for this slate as a remedy in Case No P-49-LU135-SCE, P-52-LU135-SCE, P-68-LU135-SCE, P-69-LU135-SCE

⁴ For instance, the phone log maintained by one business agent showed that while 93 phone calls made by him, only 15 members were reached by telephone.

⁵Use of vacation time for campaigning does not violate the *Rules*. See *Rules*, Article VIII, § 10 (b)

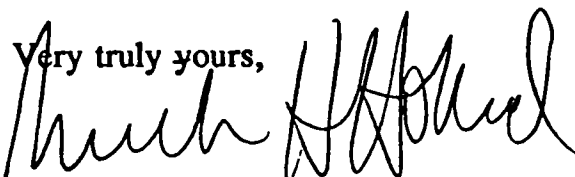
Gary L. Gregory
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the membership It was the amount of time utilized for campaigning which affected the election, not the relatively minuscule period used for telephoning

Based on the evidence and the vote margins between the candidates -- almost 600 votes between the lowest winning candidate and the highest ranked loser -- the Election Officer is unable to conclude that the results of the election ^{may} would have been different if no phone bank had been established and/or no calls made to members. Therefore, the violation of the *Rules* found by the Election Officer -- providing only one slate of candidates with phone numbers obtained by Local business agents and employees in their official capacities -- did not affect the outcome of the election

Accordingly, these deferred pre-election protests are all 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 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/mca

cc Frederick B. Lacey, Independent Administrator
Peggy A. Hillman, Regional Coordinator

IN RE:

GARY L. GREGORY
RICHARD SPURGEON

and

IBT LOCAL UNION NO. 135

91 - Elec. App. - 135 (SA)

DECISION OF THE
INDEPENDENT
ADMINISTRATOR

This matter arises out of an appeal from an April 16, 1991, Decision of the Election Officer. The Election Officer consolidated five pre-election protests and, pursuant to the Rules For The IBT International Union Delegate And Officer Election (the "Election Rules"), Article XI, Section 1.a.(4)(b), deferred the protests for post-election consideration.¹ A hearing was held before me by way of telephone conference on April 24, 1991, at which the following persons were heard: the complainants, Gary Gregory and Richard Spurgeon; Ed Fillenwarth, an attorney on behalf of Local 135; Danny Barton and Doug Schmidt, also from Local 135; John J. Sullivan and Barbara Hillman, on behalf of the Election Officer; and Peggy Hillman, the Regional Coordinator.

As explained by the Election Officer in his Summary:

Local 135 held its election for 22 delegates and eight alternate delegates to the 1991 IBT International Convention by mail ballot. Two full slates and two

¹ The five pre-election protests were numbered: P-606-LU135-SCE, P-545-LU135-SCE, P-552-LU135-SCE, ~~P-553-LU135-SCE~~, and P-582-LU135-SCE.

independent candidates appeared on the ballots, which were mailed on February 11, 1991. The John Neal Slate was headed by the incumbent President of the Local and opposed by the Indiana Teamsters for Ron Carey Slate. There was vigorous campaigning by both slates, encompassing personal contact, telephone contact, campaign mailing and distribution of leaflets. The campaign of the Indiana Teamsters for Ron Carey Slate also featured a visit mid-February by Ron Carey, candidate for General President, and included distribution of leaflets as well as two mailings to all members

The ballots were counted on March 6, 1991. Of the 15,084 ballots mailed, 5,839 ballots were returned for a return rate of about 39 percent. Of these, 5,530 were counted. The John Neal Slate won all delegate and alternate positions by a substantial margin. In the delegate race, the winning John Neal Slate member with the fewest votes garnered 2,978 votes, or 586 more than his nearest opponent on the Indiana Teamsters for Ron Carey Slate (John D. Kirby with 2,392 votes).

The complainants allege that members of the John Neal Slate violated the Election Rules during the campaign.

First, the complainants charge that members of the John Neal Slate used Local-owned cars for campaign purposes. The complainants point to one example where a Business Agent, allegedly while on vacation, visited a worksite and bet a member a cup of coffee that the John Neal Slate would win the election. The Election Officer found no other incident of a Business Agent using his Local-owned car for campaign purposes. Even if I were to find that the cup of coffee wager constituted campaign activity, the use of the Business Agent's car in that instance did not constitute a violation of the Election Rules.

It was established at the hearing that Local 135 Business Agents all receive cars. It was further established that the Business Agents not only use the cars for business purposes, but

they also use them for personal matters, including running errands, shopping and vacations. It appears that a Business Agent's receipt of a car is a form of compensation. While it is unclear whether the Local's bylaws permit the use of Union cars for personal business, it is clear that they are so used. Thus, given that the Local-owned cars are used by the Business Agents for personal reasons, it is not a violation of the Election Rules for a Business Agent to use his car to travel to a worksite to campaign.

Moreover, the Local suggested that Business Agents oftentimes visit worksites during their vacation time to conduct Union business. Thus, the Business Agent in question may have been conducting Union business at the time he visited the worksite and bet the cup of coffee.

This leads to the complainants' second contention. Complainants complain that Business Agents campaigned in non-work areas inside employers' facilities. The Election Officer's investigation showed that 26 Business Agents took varying amounts of vacation time between February 13 and February 22 to campaign for the John Neal Slate. Thus, it appears that the Business Agents' campaigning at the worksites took place on their vacation time. Article VIII, Section 10.a. of the Election Rules expressly provides that "campaigning during paid vacation . . . or similar paid time off is . . . not violative of [the Election Rules]."

It is also not a violation of the Election Rules for a Business Agent to campaign among members in non-work areas such as

lunch rooms and break rooms. As explained by the Election Officer in his Summary:

In this case, the Election Officer's investigation confirmed that the business agents occasionally did indeed enjoy the access rights of employees to campaign in non-work areas within the employers' premises. However, the same access was enjoyed by members of the Indiana Teamsters for Ron Carey Slate, regardless of whether they were employees. Equal access on the same basis is precisely what the Election Rules require . . .

The complainants next challenge the alleged utilization by the John Neal Slate of employee telephone numbers provided by employers and/or Local 135 for purposes of campaigning through telephone calls. In fact, for a five-day period in February 1991, the John Neal Slate established an organized "phone bank." The Election Officer's investigation revealed the following:

The financing of the physical organization of the two phone banks came from the John Neal slate. That is, the slate rented space for its headquarters in Indianapolis and for an additional office in Marion, Indiana. The slate installed nine phones, paying for both the phones and the phone service. There was no evidence that funds from any employer or from the Local Union subsidized these expenses.

The phone bank operated for a five-day period between February 14 and February 19, 1991. During that period, various business agents and supporters of the John Neal slate could stop into the offices on a voluntary and informal basis and use the phones as much or as little as they wished to make calls to Local Union members to urge their support for the John Neal slate.

There was no organized schedule for calling. The 26 business agents who took vacation time to campaign spent the bulk of their time on personal contact with members, as opposed to phone calls either at home or at the phone bank. The evidence suggested that many of the calls made from the phone bank did not result in contact with the voting member. The phone log maintained by one business agent, for example, showed that only 15 of 93 calls connected him with the member he wished to reach.

APR-29-91

There was no evidence that resources of any employer or the Local Union were utilized in staffing the phones or providing the phones or paying for the phone service.

The evidence uncovered by the Election Officer revealed that some of the phone numbers used by the Business Agents were, in fact, obtained from employers and the Local in their capacity as Business Agents. The Local refused a request by the opposing candidates for equal access to these phone lists. The Election Officer rightfully concluded that the Local's refusal to allow opposing candidates the same advantage violated the Election Rules. The Election Rules are designed to prevent candidates from obtaining an unfair advantage due to their station in, or contacts with, the Local or employers.²

Having found a violation of the Election Rules, the Election Officer then addressed the question of whether the violation "may have affected the outcome of the election." The Election Rules are clear that:

Post-election protests shall only be considered and remedied if the alleged violation may have affected the outcome of the election.
[Election Rules, Article XI, Section 1.b.(2).]

The Election Officer determined that the use of the phone numbers by the Business Agents did not present a violation of the Election Rules which "may have affected the outcome of the election." In reaching this conclusion, the Election Officer relied on the following factors:

² The complainants also suggest that the John Neal Slate hired a "professional phone solicitor." The evidence, however, did not support this allegation.

F-2

1. The phone bank was maintained only five days out of a voting period that spanned 24 days;

2. The election was characterized by vigorous campaigning by both sides -- including personal visits and contacts;

3. Members received communication from the members and supporters by both slates by phone, by mail and through distribution of campaign literatures;

4. The vast proportion of time spent by Business Agents supporting the John Neal Slate was devoted not to phone calls, but to direct personal contact;

5. Evidence suggests that the Business Agent's success in actually contacting members by telephone was, at best, sporadic;

6. Evidence revealed that most of the phone calls were not successful and, in fact, tended to anger those members which were contacted; and

7. The margin of victory was not close. As stated, the John Neal Slate won by a spread of 566 votes of the 5,836 votes cast.³

As noted in In Re: Petroff, 91 - Elec. App. - 116 (SA), Decision of the Independent Administrator, (April 1, 1991):

Naturally, in determining whether any violation "may have affected the outcome of an election," a certain amount of speculation must be exercised. In this connection, the expertise of the Election Officer is entitled to some weight that will vary with the circumstances.

In this case, the complainants allege that thousands upon thousands of phone calls were made by the Business Agents. The evidence elicited by the Election Officer does not support such speculation. In fact, as noted, the Election Officer's investigation revealed that the Business Agents' use of the

³ The spread for the alternate candidate vote was equally significant -- totalling 588 votes.

telephone was quite ineffective and the success rate of contacting members was sporadic.

The complainants also contend that the Election Officer placed undue weight on the John Neal Slate's margin of victory in determining whether or not the violation "may have affected the outcome of the election." In making this argument, the complainants mischaracterize the Election Officer's analysis. It is clear that the Election Officer examined the totality of the circumstances including, among many other things, the margin of victory. This is not a case, as complainants suggest, which is analogous to Wirtz v. Hotel Employees Union, Local 6, 391 U.S. 492 (1968). In that case, a Local Union bylaw provision (which was found to be violative of the Labor Management Reporting And Disclosure Act), sought to exclude, what amounted to 93 percent of the membership from running for Local Union office. In Local 6, the Supreme Court correctly disregarded the margin of victory since any such margin would be illusory given that many eligible candidates were prevented from running.

The Supreme Court's decision in Local 6 is consistent with the well-settled analysis found in Wirtz v. Local Unions 410, 410A, 410B & 410C, International Union of Operating Engineers, 366 F.2d 438 (2d Cir. 1966). In fact, the Local 6 Court relied on the Local 410 analysis. As explained by the Election Officer in his Summary:

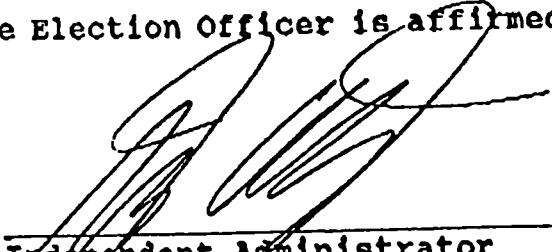
For a violation to have effected an election, the Election Officer must find a reasonable probability that the results of the election may have been different if the violation had not occurred. Wirtz v. Local Unions 410, 410A, 410B & 410C, International Union of Operating Engineers, 366 F.2d 438 (2d Cir. 1966). There is no

warrant to set aside an election unless there is a "meaningful relation" between the challenged conduct and the outcome of the election. Id.

Here, I agree with the Election Officer's conclusion that the required nexus between the abuse of the phone numbers and the outcome of the election is absent.

The complainants also allege that the Election Officer's investigation in this matter was ineffective and incomplete. This contention is baseless. The Election Officer conducted an extensive investigation, which included taking the sworn depositions of six Business Agents and Stewards.

Accordingly, the decision of the Election Officer is affirmed.



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

Dated: April 29, 1991

5/21/91

SPURGEON & GREGORY
ELECTION PROTEST

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA, :
 :
 Plaintiff, :

-v- : ORDER

INTERNATIONAL BROTHERHOOD OF : 88 CIV. 4486 (DNE)
 TEAMSTERS, CHAUFFEURS, :
 WAREHOUSEMEN AND HELPERS OF :
 AMERICA, AFL-CIO, et al., :
 :
 Defendants. :

-----X

IN RE: PETITION FOR REVIEW OF :
 DECISION 91-ELEC. APP.-135 OF :
 THE INDEPENDENT ADMINISTRATOR :
 -----X

EDELSTEIN, District Judge:

WHEREAS petitioners Spurgeon and Gregory appeal decision 91-Elec. App.-135 of the Independent Administrator, which reviewed the Election Officer's decisions P-606-LU135-SCE, P-545-LU135-SCE, P-552-U135-SCE, P-585-LU135-SCE and P-582-LU135-SCE; and

WHEREAS the Independent Administrator determined that campaigning by the Local 135 Business Agent during his vacation was permitted pursuant to Article VIII, §10.(a) of the election rules; and

WHEREAS Article VIII, §10.(a) of the election rules provides that "campaigning during paid vacation...or similar paid time off is...not violative of [the election rules"; and

WHEREAS Article XI, §1.(b)(2) of the election rules provides that "[p]ost election protests shall only be considered and remedied if the alleged violation may have affected the outcome of the election; and

WHEREAS the Independent Administrator further determined that no conduct which occurred during the Local 135 election would "have affected the outcome of the election; and

WHEREAS this Court and the Court of Appeals have ruled that determinations of the Independent Administrator "are entitled to great deference." United States v. International Brotherhood of Teamsters, 905 F.2d 610, 616 (2d Cir., 1990), aff'g March 13, 1990 Opinion & Order, 743 F. Supp. 155 (S.D.N.Y., 1990).

WHEREAS upon review, the determination of the Independent Administrator is fully supported by the evidence; and

IT IS HEREBY ORDERED that the decision 91-Elec. App.-135 of the Independent Administrator is affirmed in all respects.

So Ordered.

Dated: May 21, 1991
New York, New York



U.S.D.J.