

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

March 26, 1991

VIA UPS OVERNIGHT

Barry L Clark
5893 Crescent Ave
Buena Park, CA 90620

Richard Martino
Secretary-Treasurer
IBT Local Union 420
1221 N Peck Rd
S El Monte, CA 91733

Pete Gallegos
IBT Local Union 420
1221 N Peck Rd
S El Monte, CA 91733

Re: Election Office Case No. P-677-LU420-CLA

Gentlemen

A pre-election protest was timely filed pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") In his protest, Barry Clark alleges that the *Rules* have been violated because the Business Agents have engaged in campaign activity during time that was paid for by the Union

The protest was investigated by Adjunct Regional Coordinator Raymond Cordova Clark was unable to provide the investigator with any specific information as to dates, times, or work locations where Local 490 Business Agents have engaged in any campaign activity prohibited by the *Rules*¹ Clark infers, however, that the *Rules* have been violated because Business Agents visit the job sites in groups of two or three Business Agents

The Local explained that usually at least two Business Agents visit the job sites together to enable one of the agents to check for the presence of non-Union drivers on

¹Clark has requested the Election Officer to send a questionnaire to the members to obtain information to support his allegations The Election Officer does not find this to be an appropriate investigatory method in this case, where no evidence can be presented by the protestor in support of his claim

Barry L Clark
Page 2

the site Moreover, more than one business agent is often necessary because the work sites, particularly construction sites, are quite large Thus, two agents are needed to ensure that all members may be contacted This explanation by the Local does not appear pretextual

Based on the foregoing, the Election Officer concludes there is insufficient evidence that the *Rules* have been violated The 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 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
Geraldine L Leshin, Regional Coordinator

IN RE:

BARRY L. CLARK

and

RICHARD MARTINO

and

IBT LOCAL UNION NO. 420

91 - Elec. App. - 152 (SA)

DECISION OF THE
INDEPENDENT
ADMINISTRATOR

This matter arises out of an appeal from a decision of the Election Officer in Case Nos. [REDACTED] Post-69-LU420-CLA, P-749-LU420-CLA and P-750-LU420-CLA. A hearing was held before me by way of telephone conference on May 22, 1991, at which the following persons were heard: Barry Clark, Clyde Craig and Horace Miranda, on behalf of the complainants; Richard Martino, on behalf of Local 420; Bruce Boyens and Geraldine Leshin, the Regional Coordinators, and John J. Sullivan and Barbara Hillman, on behalf of the Election Officer.

The background concerning Local 420's election is found in the Election Officer's Summary:

Local Union No. 420 held its election for four delegates and three alternate delegates to the 1991 Convention by mail ballot. Three slates appeared on the ballot, including the "Richard 'Dick' Martino Executive Board Slate" headed by the incumbent Secretary-Treasurer, Richard Martino (hereinafter the "Martino Slate"), and the "420 Delegate Committee for Rank and File Slate," headed by protester Barry Clark.

Ballots were counted on March 25, 1991. The candidates on the Martino Slate won all four of the delegate positions and all three of the alternate positions. In the election for delegate, the margin of victory between the Martino Slate candidate with the fewest votes (Steve Blaco with 264 votes) and the losing candidate with the highest number of votes (Mr. Clark with 215 votes) was 49 votes. In the election for alternate delegate, the margin of victory between the Martino Slate candidate with the fewest votes (Allen Shaw with 336 votes) and the losing candidate with the highest number of votes (Samuel Littlejohn with 287 votes) was also 49 votes.

ALLEGED CAMPAIGNING ON UNION TIME

The first allegation raised is that Mr. Martino, the Local Secretary-Treasurer, along with the Local's President and Recording Secretary, violated the Rules For The IBT International Union Delegate And Officer Election (the "Election Rules") by visiting worksites to campaign among members employed there under the pretext of conducting official Union business. Article VIII, Section 10 b. of the Election Rules prohibits Union officers from participating in campaign activities on time that is paid for by the Local, unless such campaigning is incidental to regular Union business. In Re: Carr, 91 - Elec. App. -143 (SA) (May 2, 1991) (Wherein it was found that Local Secretary-Treasurer's display of a sign in his car supporting his delegate campaign while visiting worksites was incidental to his work and, therefore, not a violation of the Election Rules).

At the hearing, Mr. Martino stated that he did visit about 25 worksites in an effort to insure that the results of the

nominations meeting were properly posted. In fact, Mr. Martino emphasized that the Election Rules place upon him the obligation to post, on all Union bulletin boards, the results of the nominations. Election Rules, Article II, Section 4. Mr. Martino further indicated that, while at the worksites, he never discussed his campaign unless he was on lunch or a regularly scheduled break. The Election Officer's investigation suggests a different version of events.

The Election Officer's representative visited many worksites and interviewed as many as 30 witnesses, 25 of which were found independently by the Election Officer. All of the witnesses stated that they had not seen Mr. Martino at their worksite until his election campaign had started. In addition, all the witnesses stated that Mr. Martino initiated campaign-related conversations with them at all times of the day. Mr. Martino was also seen distributing campaign literature while visiting one of the worksites and, on at least one occasion, he was seen posting campaign material. As explained by the Election Officer in his Summary.

On balance, the Election Officer was compelled to conclude that Mr. Martino violated Article VIII, Section 10(b) by campaigning while on paid Union time for a period of eight days. In view of Mr. Martino's practice of initiating conversation with union members and using such discussions to solicit their support, it must be concluded that Mr. Martino's decision to undertake personal posting of the nominations results when the more conventional approach of sending the results to union stewards at the various worksites for posting was available to him, was a pretext for personal visits that would provide the occasion for campaigning.

I affirm the Election Officer's finding that Mr. Martino violated the Election Rules. Mr. Martino's version of events is disputed by the Election Officer's extensive investigation. As noted, the Election Officer interviewed some 30 witnesses. Each of those witnesses statements were consistent and corroborated each other. It is clear that Mr. Martino did not confine his campaigning to those times when he was on breaks. I find that Mr. Martino freely campaigned at the worksites and used his position as Secretary-Treasurer to gain access to the worksites under the pretext that he personally had to post the nomination results. Although the Election Rules impose on him the obligation to post those results, it is common practice for the Secretary-Treasurer to rely on Business Agents and Stewards at the job sites to complete the posting.

Having found a violation of the Election Rules, it was then necessary for the Election Officer to determine whether the violation affected the outcome of the election. The Election Rules specify that post-election protests must 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). As explained by the Election Officer in his Summary:

In this election, there was active campaigning by all candidates and slates, including by Mr. Clark and his slate. All candidates, including Mr. Clark, engaged in direct, personal campaigning. In addition, they all posted campaign literature on bulletin boards at various worksites. Both of the unsuccessful slates -- Mr. Clark's Rank and File slate and the Hoss Miranda/Henry

Morales slate -- completed at least one campaign mailing to the entire membership.

Therefore, insofar as access to the membership is concerned, Mr. Martino's campaigning among the membership was no different from the campaigning engaged in by his opponents. The only difference implicating the Election Rules is that Mr. Martino was being paid by the Union for the eight days in which he was campaigning.

I agree with the Election Officer's conclusion. It cannot be said that Mr. Martino's campaigning at the worksites affected the outcome of the election.

Nonetheless, the Election Officer imposed a remedy to cure the improper utilization of Local Union funds to support the Martino slate. Recognizing that such a violation of the Election Rules is a serious one, the Election Officer directed Mr. Martino to reimburse the Local for the salary, benefits and expenses he received during the eight-day period he used to campaign at the worksites.

I find this remedy proper and it is affirmed.

LOCAL UNION NEWSLETTER

The Election Officer found that Mr. Martino also violated the Election Rules by publishing the following statement in his report to the membership at the Local's expense in April 1991, after the election:

During the delegates' election, the Rank and File Delegates' Slate used the Western Conference of Teamsters' logo on their literature without the permission of the Western Conference of Teamsters in order to mislead the members into believing that the Western Conference of Teamsters endorsed their slate.

This only reveals their lack of integrity and credibility to the members they deceived. Permission was never granted to them by the Western Conference of Teamsters.

Article VIII, Section 10 (c). of the Election Rules prohibits the use of Union stationery, resources or funds to assist in campaigning. Although this statement was published at the conclusion of the delegate election, it is clearly campaign material relating back to the delegate election. As such, I agree with the Election Officer's conclusion that it violates the proscriptions of Article VIII, Section 10.(c).

Mr. Martino's breach of the Election Rules in this regard is all the more egregious given the fact that the use of the Western Conference of Teamsters logo on Mr. Clark's campaign material had been the subject of two earlier protests. One of those protests was filed by a member of Mr. Martino's slate. In those protests, the Election Officer determined that the use of the logo on material that is obviously campaign literature does not violate the Election Rules. The Election Officer specifically found that the appearance of the logo on campaign material was not likely to confuse or deceive members into believing that the campaign literature was endorsed or approved by the Western Conference of Teamsters. As explained in the Election Officer's Summary:

Despite these findings, Mr. Martino included in his Secretary-Treasurer's report an express statement that the logo was used "in order to mislead the members." He further maligned the integrity and credibility of the Rank and File candidates on the basis of their use of the logo. However, the Election Officer specifically found that such use was common practice in IBT elections and did not constitute wrong-doing.

The Election Officer recognized that because Mr. Martino's statement was published after the election, it cannot be said that it affected the outcome of the election. Thus, a rerun of the election clearly was not warranted. See Election Rules, Article XI, Section 1.b.(2).

The Election Officer, however, found that some remedy was warranted given the nature of the violation. Accordingly, the Election Officer directed Mr. Martino to publicize an appropriate retraction.

The Election Officer's treatment of this violation of the Election Rules is proper and is affirmed.

WORKSITE LISTS

The last issue raised in this appeal is the alleged dilatory response of the Local in supplying Mr. Clark with worksite lists in alleged violation of Article VIII, Section 1.c. of the Election Rules. Mr. Clark contended that certain worksite information was omitted from the list supplied to him. The Election Officer's investigation revealed that information concerning 18 worksites were omitted from the list supplied by the Local. The Local provided Mr. Clark with a list containing information concerning 404 separate employers. The 18 employers whose worksites were omitted from the list reflects a small percentage of the total worksites supplied. Moreover, of the 18 worksites not supplied, the largest employer employed only eight members of Local 420, one

of whom was ineligible to participate as a voter in the Local 420 delegate and alternate delegate election.

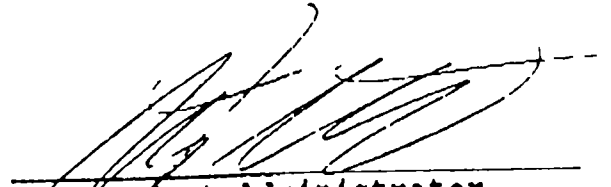
In fact, the Election Officer's investigation revealed that of the 18 omitted worksites, only 54 eligible employees worked at those locations. As noted at the outset, Mr. Clark lost his bid for delegate by 49 votes. Mr. Littlejohn lost his bid for alternate by the same margin. Thus, assuming that 100 percent of the 54 eligible members voted, Mr. Clark and Mr. Littlejohn would have had to have garnered more than 90 percent of their votes.¹ The actual participation of Local 420 membership in this election was less than 27 percent (2,649 ballots mailed and 748 ballots cast, of which 65 were voided). Mr. Clark's 215 votes represents less than 32 percent of the valid ballots cast. Mr. Littlejohn's 287 votes represents just 42 percent of the valid ballots cast. Thus, it cannot reasonably be said that if Mr. Clark or Mr. Littlejohn were given the worksite information concerning these 18 employers that they would have been able to sway such a large percentage of the eligible members to vote in their favor. The fact that Messrs. Clark and Littlejohn had access to a list which

¹ The Election Officer, in his Supplemental Summary, states it this way:

In order for the results of this election to have been affected, 92% of the 54 eligible members employed at the 18 worksites would have had to have voted in the Local 420 delegate and alternate delegate election. Of this 92%, 100% would have had to have voted for Mr. Clark and Samuel Littlejohn for the results of this election to have been different.

included 404 worksites cannot be ignored. Messrs. Clark and Littlejohn were unable to gain a winning percentage of the votes at those sites. Thus, there is no suggestion that anything would have been different at the 18 worksites which were omitted.

Accordingly, the decision of the Election Officer denying this portion of the protest is affirmed.



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

Dated: May 28, 1991