

OFFICE OF THE ELECTION OFFICER  
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Michael H Holland  
Election Officer

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March 25, 1991

**VIA UPS OVERNIGHT**

Ray Nickum  
c/o Local Union 63  
c/o The Informed Teamsters  
for the Good of All Slate  
1616 W Ninth St  
Room 205  
Los Angeles, CA 90015

Robert Marciel  
Secretary-Treasurer  
IBT Local Union 63  
1616 W Ninth St  
Room 205  
Los Angeles, CA 90015

**Re: Election Office Case No. P-683-LU63-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, Ray Nickum alleges that the ballot for the Local 63 election was improperly formatted and that instructions mailed with the ballot inform the members to mark the ballot with pencil contrary to previous representations by the Election Office staff that ballots could be marked with pens

The investigation discloses the following facts The ballots for this Local will be electronically counted While the ballot instructions do state that the ballot is to be marked with pencil, the ballots will be tallied regardless of the implement used by the member to mark his/her ballot The electronic voting machine, which will be used to tally the ballots, "reads" pencil markings more easily than it reads markings made with other writing implements However, the machine will register and tally ballots marked with almost any writing implement other than a red pen or pencil Further, if the electronic voting machine is unable to register or tally a particular ballot, it visibly rejects such ballot and does not tally the vote contained in the ballot

The ballot is rejected in a manner that is visible to all persons present The ballot can then be remarked -- by writing over the original marks with a proper implement - - by the Election Officer personnel within the view of all candidates and observers After remarking, the ballot is reinserted into the machine and counted Thus, utilization by the voter of an improper implement for marking his/her ballot will not prevent that ballot from being counted

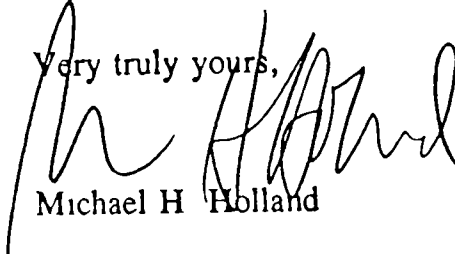
Ray Nickum  
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Based on the foregoing, this aspect of the protest is DENIED

With respect to the allegation regarding the format of the ballot, the Election Officer has decided pursuant to his authority 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 that portion of this protest until after the Local 63 election. This allegation will then be resolved in accordance with the procedures set forth in Article XI, § 1 (b) of the *Rules*.

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:

RAY NICKUM, on behalf of the  
INFORMED TEAMSTERS FOR THE  
GOOD OF ALL SLATE

and

GERALD R. MOERLER, et al. on  
behalf of the DELEGATES FOR  
CAREY SLATE

and

IBT LOCAL UNION NO. 63

91 - Elec. App. - 137 (SA)

DECISION OF THE  
INDEPENDENT  
ADMINISTRATOR

This matter arises out of an appeal from a Decision of the Election Officer in Case Nos. Post61-LU63-CLA and [REDACTED]. A hearing was held before me by way of telephone conference on April 25, 1991, at which the following persons were heard: Susan Jennik, an attorney representing the Delegates For Carey Slate; Gerald Moerler and Scott Askey, delegate candidates on the Delegates For Carey Slate; Robert Vogel, an attorney representing Local 63; Robert Aquino, President of Local 63; Geraldine Leshin, the Regional Coordinator; and John J. Sullivan and Barbara Hillman, on behalf of the Election Officer.

Local 63 held its election for 17 delegates and four alternate delegates for the 1991 IBT International Convention by mail ballot. All candidates for delegate or alternate delegate were affiliated with one of two slates. Both slates appeared on the ballot. One

<sup>1</sup> These protests raise the same issues and have been consolidated for post-election consideration.

Slate, who is known as the "Informed Teamsters For The Good Of All Slate" (hereinafter the "Informed Teamsters Slate"). The second slate was known as "Delegates For Carey Slate" (hereinafter the "Carey Slate").

On March 26, 1991, 2,714 return ballots were counted. Of the 17 highest rank candidates for delegates, 14 were affiliated with the Carey Slate and the three others were affiliated with the Informed Teamsters Slate. The vote was very close. In the field of 34 candidates, the over-all spread of votes between the candidate with the most votes and the candidate with the least votes was only 154 votes. In the Election Officer's Summary (at footnote 4 on p. 4), he sets forth the ranking of the delegate candidates by number of votes won:

Set out below is a ranking of the delegate candidates by number of votes won. Slates are designated in the right hand column. For easier reference, the Delegates for Carey candidates are set in bold typeface:

<u>Delegate Candidates</u>	<u>Votes</u>	<u>Slate</u>
Susan Meyers	1356	Delegate for Carey
Donna May	1333	Delegate for Carey
Wanda Ellerman	1332	Delegate for Carey
Lyn Salinas	1324	Delegate for Carey
Scott Askey	1320	Delegate for Carey
Steve Lord	1311	Delegate for Carey
Richard "Rick" Coleman	1310	Delegate for Carey
Sam Fenn	1303	Delegate for Carey
Tommy Wilson	1303	Informed Teamsters
Robert "Bob" Paffenroth	1300	Delegate for Carey
Gerald "Jerry" Moerler	1288	Delegate for Carey
Tony Moreno	1287	Informed Teamsters
George Hover	1283	Delegate for Carey
Terry Mangrum	1280	Delegate for Carey
Mark Hood	1275	Informed Teamsters
Ronald J. Bonesteel	1274	Delegate for Carey
Dennis Dolton	1274	Delegate for Carey

(continued)

<u>Delegate Candidates (con't)</u>	<u>Votes</u>	<u>Slate</u>
John Cetinske	1273	Delegate for Carey
Billy Lellis	1267	Delegate for Carey
Glenn Buettner	1267	Delegate for Carey
Windy Halterman	1264	Informed Teamsters
Joe Arzate	1263	Informed Teamsters
Bob Hayes	1262	Informed Teamsters
Jack Douglass	1260	Informed Teamsters
Lucille Morua	1254	Informed Teamsters
Harold Taylor	1246	Informed Teamsters
Bob Stuver	1240	Informed Teamsters
Dennis Thompson	1235	Informed Teamsters
Harold Smith	1226	Informed Teamsters
Mike Hanlon	1222	Informed Teamsters
Bill Freitag	1217	Informed Teamsters
Fred Beaudette	1215	Informed Teamsters
Terry Purrington	1207	Informed Teamsters
Mike Magurn	1202	Informed Teamsters

A review of the election results reveals only ten votes separated the lowest vote-getting winning candidate on the Carey slate from the highest vote-getting losing candidate on the Informed Teamsters Slate. In fact, the 14 losing candidates on the Informed Teamsters Slate are themselves separated by only 62 votes, and in many instances, individuals are separated by only a handful of votes.

In short, the election results reveal a very close election.

The contested issue on this appeal involves the position of candidate names from the two slates on the ballot. Pursuant to Article II, Section 8.b of the Rules For The IBT International Union Delegate And Officer Election (the "Election Rules"), the position of slates on the ballot was determined by a coin toss with the Informed Teamsters Slate winning the toss and receiving first choice as to ballot position. The Informed Teamsters Slate chose

the left-hand side of the ballot, leaving the right-hand side of the ballot to the Carey Slate.

As a result of an error in the printing of the ballots, the ballots which were mailed reversed the order of the slates. In other words, the Carey Slate was on the left-hand side of the ballot and the Informed Teamsters Slate was on the right-hand side of the ballot. Although representatives from both slates who examined the ballots prior to their printing advised the Election Officer of the error, this information was not reported to the printer and, thus, the ballots were never corrected. A copy of the ballot as printed and distributed is attached hereto.

The issue to be resolved is whether this error "may have affected the outcome of the election." The Election Officer determined that it did. See Election Rules, Article XI, Section 1 b.(2). In making that determination, the Election Officer relied on several factors.

In his Summary, the Election Officer stated that "ballot position has a demonstrable effect in elections." Election Officer Summary, p.7 at para. 12 The Election Officer stated that the left-hand position, or the "first" position is the favorable position. Id. at p.6, para. 8. This appears to be supported by the fact that the Informed Teamsters Slate in fact chose the "first" position. Moreover, the Election Rules themselves recognize that positioning on the ballot will have some effect on the election. This is why the Election Rules require the ballot position to be chosen by lot. Clearly, the Informed Teamsters

members of Local 63 volunteered information to the Election Officer that they were, in fact, confused by the ballot positions.<sup>2</sup>

Moreover, the Carey Slate specifically emphasized its position on the ballot. It is recognized that if supporters of the Carey Slate voted the "right" side of the ballot, as they were instructed, the Carey Slate would have been prejudiced since they actually appeared on the left-hand side of the ballot. Again, if this were the only factor to be considered, perhaps a rerun of the election is not warranted. However, when combined with the other factors, however, it appears clear that confusion in the voters' minds may have in fact existed.

Lastly, the closeness of the vote cannot be ignored. When the vote count is viewed against the backdrop of the Informed Teamsters Slate's missed opportunity to appear on the favored side of the ballot and the confusion which seems to have existed amongst the voters, the only reasonable conclusion which can be reached is the one achieved by the Election Officer; that the totality of the circumstances in this case suggest a reasonable probability that

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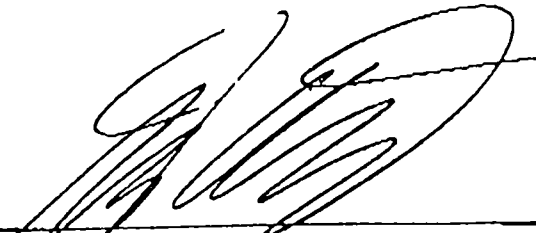
<sup>2</sup> The instant matter is distinguishable from Bayliss Trucking Corp., 177 NLRB 89 (June 30, 1969), in which an election was conducted to see which Union would represent the workers. The two Locals which were competing for the workers were Coal Local 553 and Amalgamated Local 355. During the pre-election conference, Amalgamated Local 355 received the choice of the position on the ballot and chose the left side. The ballot that was distributed, however, reversed the positions of the Locals. This is exactly what happened in this case. In the Bayliss Trucking Corp. matter, the trial examiner found that "none of the employees who voted was confused by the position of the Unions on the ballots." In making that determination, the trial examiner relied extensively on the testimony of 11 out of the 12 employees who voted in the election. In this case, we do not have the benefit of such testimony.



the position of the slates on the ballot "may have affected the outcome of the election."

Accordingly, the decision of the Election Officer is affirmed in all respects.

At the hearing, Ms. Jennik suggested that the Election Officer should bear the cost of the rerun, arguing that the error was caused by the Election Officer. This suggestion is rejected. It should be noted that the Election Officer serves as a Court-appointed officer and is thus shielded from such claims by virtue of the March 14, 1989, Consent Order (Section H.13.) which created his position.



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

Dated: April 30, 1991