

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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June 5, 1991

VIA UPS OVERNIGHT

Richard N. D'Agosto
P. O. Box 455
Metuchen, NJ 08840

Giolemo Musso
President
IBT Local Union 641
255 Route 3 East
Secaucus, NJ 07094

Re: Election Office Case No. P-745-LU641-NJE

Gentlemen:

A protest has been filed pursuant to Article XI, § 1 of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules"). In his protest Richard N. D'Agosto, an unsuccessful candidate for delegate to the 1991 IBT International Convention from Local 641, alleges that George Lonergan, Secretary-Treasurer of the Local improperly conducted an election for job steward at D'Agosto's worksite in order to disadvantage D'Agosto in the delegate election.

The protest was investigated by Regional Coordinator Ed Ellis. The investigation discloses the following facts: D'Agosto is employed by Yellow Freight at its Elizabeth, New Jersey location. He is part of the work unit known as the Line Haul Drivers Unit. On or about March 15, 1991, the Local called for job steward elections among the IBT members employed in the unit. D'Agosto objected to certain of the procedures followed in setting up the election. On April 3, 1991, he filed an internal Union appeal noting his objections and requesting a halt to the election process. His appeal objects specifically to the adequacy of the notice of the steward election and the procedure for securing the ballots. On April 5, 1991, D'Agosto filed additional internal Union objections to the steward election procedure, alleging that (1) the Local had permitted an invalid nomination to be made for job steward, and (2) that the timing of the job steward election would have the effect of influencing the delegate election. D'Agosto urged the Local to postpone or cancel the elections for both reasons.

The steward election was held as scheduled, and D'Agosto, a candidate for steward was defeated. On April 17, 1991, D'Agosto was also defeated in his campaign for delegate.

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The Election Officer does not have jurisdiction over internal Union affairs that are unrelated to the process of electing IBT delegates and International Officers. The procedure for elections of Local Union officers or job stewards is governed by the Local's by-laws and the International Constitution as well as, where applicable, the Labor-Management Reporting and Disclosure Act (LMRDA). For example, such issues as adequacy of notice or handling of ballots are matters that are properly raised through the internal Union process or, in certain instances, with the Department of Labor. Indeed, D'Agosto processed his claims in this case through the Union structure.

The Election Officer will assume jurisdiction over cases involving exclusively Local Union officer or steward elections only where there is an allegation that an IBT member has been denied the right to participate in Union affairs or has otherwise been discriminated against because of activity in the election processes over which the Election Officer otherwise has jurisdiction, i.e., the IBT International Union delegate and officer elections. There is no such evidence in the case. D'Agosto was in fact nominated as a candidate for steward and had equal opportunity with all other candidates to campaign for the position of steward. The fact that a delegate election is pending does not mean that the Local should be prohibited from conducting its business even if such business could arguably have some impact on the delegate election.

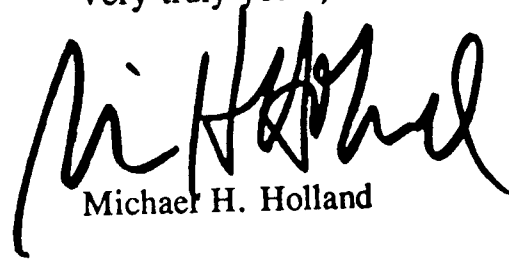
There is no evidence that the Local's conduct of normal Union business, that is the election of Union stewards, advantaged any candidate in the delegate election or discriminated against any candidate in the delegate election. Further, there are only 50 or 60 IBT members at Yellow Freight employed as Line Haul Drivers. D'Agosto received 315 votes in the delegate election. The lowest number of votes received by a winning candidate was 733. Thus 418 votes separate D'Agosto from the winning candidate with the lowest number of votes. Whether D'Agosto was disadvantaged by the steward election process, or the timing of that election, it had no effect on the outcome of his delegate election.

Under the circumstances, 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.

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Very truly yours,



Michael H. Holland

MHH/mjv

cc: Frederick B. Lacey, Independent Administrator
Ed Ellis, Regional Coordinator

IN RE:

RICHARD N. D'AGOSTO

and

IBT LOCAL UNION NO. 641

91 - Elec. App. - 166 (SA)

DECISION OF THE
INDEPENDENT
ADMINISTRATOR

This matter arises out of an appeal from a decision of the Election Officer in Case No. P-745-LU641-NJE. A hearing was held before me on June 19, 1991, at which the following persons were heard via telephone conference: the complainant, Richard D'Agosto and Al Kroll, an attorney on behalf of Local 641. John J. Sullivan, on behalf of the Election Office, was heard in person.

The facts underlying this appeal are uncomplicated. As stated in the Election Officer's Summary:

Richard D'Agosto is a member of Local Union No. 641 and an employee of Yellow Freight Company in its Line Haul Drivers Unit at Elizabeth, New Jersey. He was an unsuccessful candidate for shop steward in that unit on April 8-9, 1991 and an unsuccessful candidate for delegate to the IBT Convention on April 17, 1991.

On March 15, 1991, the Local notified the members of the Line Haul Drivers Unit that an election for shop steward in that unit would be held on April 8 and 9, 1991. There are 50 to 60 IBT members in that unit.

Mr. D'Agosto objected to certain procedures used by the Local in conducting the steward election. On April 3, 1991, he filed an

internal Union appeal challenging the adequacy of notice of the election and the procedures to be used in securing the ballots. On April 5, 1991, Mr. D'Agosto submitted further objection through the internal Union appeal process concerning an allegedly improper nomination. He also objected to the alleged effect of that election on his prospects in the election for delegates to the IBT Convention. Mr. D'Agosto asked that the steward election be postponed or canceled until after the delegate election.

The steward election was held as scheduled, and Mr. D'Agosto did not win.

On April 17, 1991, the Local elected its four delegates to the IBT Convention. Mr. D'Agosto lost that election as well. The margin of victory between Mr. D'Agosto (315 votes) and the winning candidate with the fewest number of votes (John Krommenhoek with 733 votes) was substantial: 418 votes.

At the hearing, Mr. D'Agosto further complained that Mr. Barnes, an adversary of his in the delegate election and a business agent for the Local, participated in the steward election and, in fact, was present at Mr. D'Agosto's work site for two full days while the nominations for the steward position were received. Mr. D'Agosto suggests that this gave Mr. Barnes an unfair advantage and negatively effected Mr. D'Agosto's delegate campaign. In addition, Mr. D'Agosto suggests that the entire steward election was orchestrated to prejudice his chances in the delegate race.

The Election Officer found no violation of the "Election Rules." I agree with this conclusion. Neither the Local nor Mr. Barnes violated the "Election Rules" in any way. As a business agent, Mr. Barnes was obligated to conduct the steward election. The fact that he was at the work site for two full days to collect

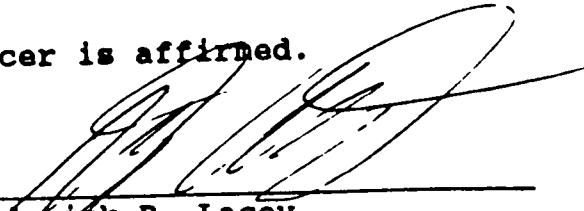
nominations was consistent with past practice. The two-day period is allotted so that workers who are on the road will have an opportunity to submit names in nomination. As stated by the Election Officer in his Summary:

The Election Officer has neither the authority nor the inclination to order the suspension of the normal and regular business of a Local Union until after the delegate election to avoid any possible effect thereon. Nothing in the "Election Rules" requires the delegate election to be conducted in a vacuum. Absent any showing of nexus to the delegate election, the Election Officer must decline to interfere in the internal affairs of the Local Unions merely because they are conducted at the same time.

Having found no violation of the "Election Rules," it is not necessary to address the question, in this post-election context, whether or not the alleged violation may have affected the outcome of the election. See Article XI, Section 1.b.(2) of the Rules For The IBT International Union Delegate And Officer Election (the "Election Rules"). Nonetheless, it is significant that Mr. D'Agosto lost by 418 votes. This is more votes than Mr. D'Agosto received on his own behalf. Moreover, Mr. D'Agosto stated at the hearing that 1,002 votes were counted in this election. Thus, Mr. D'Agosto lost by a margin exceeding forty percent. In other words, the election was not close and there is simply no evidence that the conduct of the steward election impacted upon the delegate election

results.

The decision of the Election Officer is affirmed.



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

Dated: June 20, 1991