

***POST-ELECTION  
PROTEST  
DECISIONS***

***ELECTION OFFICE CASE NOS.***

***POST-1-LU41-MOI to POST-30-LU748-CCV***

***VOLUME I***

***Michael H. Holland  
Election Officer  
June 1992***

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Re: Election Office Case Nos. Post1-LU41-MOI  
(formerly P-281-LU41-MOI) and P-071-LU41-MOI

Gentlemen

A post-election protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules"). The protest was filed by Wesley Epperson, and co-signed by the seven individuals, all of whom are listed above. Mr. Epperson and the seven members listed above appeared on the Carey/Teamsters for Reform Slate in Local Union 41. Mr. Epperson alleges that

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several incidents occurred during his campaign for IBT delegate which constituted an obstacle to his right to a fair and open election. Mr. Epperson asserts that the cumulative effect of the alleged *Rules* infractions benefitted the Danny Johnson Slate to the detriment of the Carey/Teamsters For Reform Slate. Each of the charges raised in Mr. Epperson's protest will be reviewed below in separately numbered sections.

In addition, on December 6, 1990, the Election Officer, pursuant to his authority under Article XI, deferred making a decision in a protest filed by Michael A. Savvoir, one of the slate members listed above (P-071-LU41-MOI). Since Mr. Savvoir's protest was deferred by the Election Officer for post-election consideration, it has been consolidated with Mr. Epperson's protest. A decision on Mr. Savvoir's pre-election protest is also set forth below.

A mail ballot election for Local 41 was conducted on Thursday, December 27, 1990. Ballots were mailed on December 7, 1990. The counting of the ballots was directed by Election Officer regional representatives William O. Eisler and Joe Cannavo and Daniel Koen of the Washington, D C Office of the Election Officer. There were eight delegate and two alternate delegate positions to be filled in Local 41's delegate and alternate delegate elections. The ballot contained six slates plus independent candidates. Seventeen (17) delegate candidates and nine (9) alternate delegate candidates ran on slates. There was one independent delegate candidate and two independent alternate delegate candidates. All of the seven candidates on the Danny Johnson Slate were

elected to seven of the eight delegate positions. James Buck, a member of the Carey/Teamsters for Reform Slate, was the eighth-ranked vote getter, and was therefore elected to the remaining delegate slot.

Steven Steen, the alternate delegate candidate listed on the Carey/Teamsters for Reform Slate was elected to one of the alternate delegate candidates. Rich Hughes, a slate member of the Danny Johnson Support Candidates Slate was elected to the remaining alternate delegate position. The ranking of candidates was as follows:

**Rank Delegate Candidates**

Name	Vote
1. Danny Johnson	1313
2. Philip E. Young	1303
3. Donald R. Speak	1288
4. Charlie Howerton	1270
5. Phil LaCapra	1223
6. Jack Torrens	1214
7. Gilbert Aguirre	1190
8. Jim Buck	831
9. Wes Epperson	809
10. Bob Martinez	802
11. Charles Welsh	788
12. George Young	786
13. Michael Savwoir	765
14. Don Gilliland	760
15. Paul Heiman	745
16. Warren L. Stevenson	502
17. Vic Terranella	426
18. Larry E. Davis	246

**Rank Alternate Candidates**

Name	Vote
1. Steven Steen	725
2. Rick Hughes	392
3. Gregg Morrison	363
4. Arlie Williams	357
5. Bob Smith	325
6. John Thompson	314
7. Al Hellebuyck	297
8. Lowell Wink Winkler	187
9. Grover Mudd	181
10. Doc Unruh	151
11. Robert E. Matney	140

Two thousand, seven hundred and five (2,705) members participated in the delegate elections. The margin of votes between the seventh-ranked elected delegate candidate on the Danny Johnson Support Candidates Slate and the highest ranking unelected alternate candidate on the Carey/Teamsters for Reform Slate was three hundred and eighty-one (381) votes.

I. The Timing of the Delegate Election - Post1-LU41-MOI

Mr. Epperson asserts that the decision by Local Union 41's Executive Board to conduct the Local Union Officer election two months prior to the delegate and alternate delegate elections served to extend an unfair advantage to the local officers who were also candidates in the delegate election. Local Union 41 conducted its Officer elections in October of 1990, pursuant to Article XXIII of the IBT Constitution. Under § 12 D(ii) of the Consent Order and Article II, § 2 of the *Rules*, Local Union 41 was, therefore, entitled to nominate and elect 1991 IBT International Convention delegates during the Fall of 1990. However, neither the Consent Order nor the *Rules* mandate that Local Union Officer elections and delegate elections taking place in the Fall of 1990 be scheduled at the same time. The Election Officer approved, after amendment, Local

41's Local Union Election Plan scheduling December 27, 1990 as the date of the election. The election was scheduled in conformity with the *Rules*.<sup>1</sup>

Mr Epperson also alleges that the Executive Board's decision to schedule delegate elections in December was designed to impede the participation of members working at UPS facilities since the UPS contract forbids time off between the first Monday after Thanksgiving and December 25th "with the exception of delivery information employees where the prohibition is in effect from the third (3rd) Monday in January to the third (3rd) Monday in March." (National Master United Parcel Service Agreement, Article 16 p 93, July 31, 1990)

The Consent Order and the *Rules* anticipated that delegate elections would occur during the busy holiday season. Indeed, holiday conflicts are inevitable given the calendar constraints of implementing the various electoral provisions of the Consent Order. Moreover, the nomination meeting occurred on November 10, 1990, fifteen (15) days before the contractual restriction against vacation time became effective. Mr. Epperson and his supporters were also free to, and did, campaign before and after work and on days off

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<sup>1</sup> It should also be noted that no protest was filed earlier, although the Local Union Election Plan Summary was posted and gave notice of the date of the election.

The *Rules* do not provide that candidates have an automatic right to exercise vacation time benefits for campaigning purposes. See *Rules*, Article IX, § 1(c). Further, the Election Officer investigation determined that Mr. Epperson and his supporters did campaign vigorously during the entirety of the campaign period.

I find that the above described protest concerning the scheduling of the delegate elections does not constitute a violation under the *Rules*. Further, neither Mr. Epperson nor his supporters were prevented from engaging in campaign activities, and in fact, did so engage. Therefore, this portion of the post-election protest is DENIED.

## II. The Local Union Officer Nomination Notice

Mr. Epperson alleges that the nomination notice for the Local Union officer election mailed to all members in August of 1990 was incorrect and served to mislead the membership about the delegate elections. Specifically, Mr. Epperson refers to the following language contained in such notice.

All officers elected in the forthcoming election shall, by virtue of such election, be delegates to any Joint Council with which the Local is affiliated, as well as to any convention of any subordinate body which may take place during their term in office. Elected Local Union officers shall be delegates to such conventions in the order of priority set forth in Article III, § 5(a)(1) of the International Constitution and as set forth in the local bylaws.

(Local 41 Nomination and Election Notice for Local Union Officers, August 1990).

The Independent Administrator has found that the above language violates the **Rules St. Clair v Local Union 439** (90 Elec. App.-9, Decision of the Independent Administrator). However, any confusion that might have been engendered by the language used by Local Union 41 in the officer nomination notice was cured by subsequent information given to the membership of Local Union 41.

On September 17, 1990, a Local Union Election Plan Summary was mailed to all Union Stewards for posting on all Local Union bulletin boards. The Summary set forth the nomination and election schedule for the election of 8 International Convention delegates and 2 alternate delegates, and clearly notified all Local Union 41 members that separate nominations and elections would be held for delegates and alternate delegates to the 1991 IBT International Convention. Article II of the Rules required that the Summary be posted on all Local Union bulletin boards within seven days, and that it remain posted throughout the delegate nomination and election process. The evidence establishes that the vast majority of the Local's 300 bulletin boards contained the Plan Summary postings.

On October 1, 1990, a combined nomination and election notice for the delegate and alternate delegate election was mailed by first class mail to every member of Local Union 41. There is no allegation that members did not receive the notice. The



nomination and election notice clearly set forth the dates for the nomination and election of delegates and alternates, and again contained the statement that eight (8) delegates and two (2) alternates were to be elected in this separate election and the members so elected would be the members who would serve as delegates and alternates from Local 41 for the 1991 IBT International Convention in Orlando, Florida. The nomination and election notice clearly notified all Local 41 members that nominations and elections, separate from the Local Union officer nominations and elections, would be held for delegate and alternate delegates to the 1991 IBT International Convention.

On November 10, 1990, approximately one hundred and twenty-five (125) members attended the nomination meeting at the Teamsters Building in Kansas City. Thirty-one (31) individuals were nominated for the delegate and alternate delegate positions. Mr. William Eisler, among other Election Officer representatives, attended the meeting.

The election was conducted by mail ballot, and all eligible members of Local Union 41 were mailed ballots on December 7, 1990. The ballots clearly stated that the election was for delegates and alternate delegates. In fact, more members participated in the delegate elections than in the Local Union Officer elections conducted on October 9, 1990.<sup>2</sup>

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<sup>2</sup> The Election Officer records indicated that a total of 2705 ballots were received for the delegate and alternate delegate election. The official tally sheet for the Local 41 Local Union Officer elections, submitted to the Election Office by Dennis Speak, Local

Based on all the above, the Election Officer concludes that the statements contained in the notice did not in fact mislead the members of Local Union 41. The postings and distributions described in the Local Union Election Notice above cured any misconception concerning whether Local Union Officers would automatically be IBT International Convention delegates, as opposed to the fact that all IBT International Convention delegates and alternates would be separately nominated and elected. Further, the extent of the membership participation in the election process underscores that the membership was not misled into believing that the earlier Officer election had already determined the identity of Local 41's delegates and alternate delegates.

Thus, I find that the above described protest did not affect the outcome of the election. Therefore, this portion of the post-election protest is **DENIED**. *Rules, Art. XI, § 1(b)(2).*

### **III. Failure to Publish Notice in the Joint Council Newspaper**

Mr. Epperson also charges that the Joint Council newspaper "Teamwork" failed to mention the Local Union 41 delegate election and created an unfair advantage

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41's Secretary Treasurer, indicates that 2483 ballots were received in the Local Union Officer Election, which was conducted in October of 1990.

for opponents. In support of his protest, Mr. Epperson cites Article II, § 5(d) of the **Rules**, which recommends that, in addition to sending individual election notices by mail, a Local Union also publish an election notice in any Union newspaper, which is sent or otherwise made available to its members.

Mr. Epperson's claims with respect to this issue miscomprehend the **Rules**. The **Rules** are clear on their face that an additional notice of this type is recommended, but not required. Moreover, the high voter turnout relative to the Local Union Officer election amply demonstrates that the additional notice was not needed. The facts demonstrate that the membership of Local Union 41 was adequately notified concerning the delegate election process through the various postings, individual notices, and extensive campaign activity. Finally, Mr. Epperson does not provide any information to demonstrate how the Local Union's failing to mention the delegate election in the Local Union newspaper aided one candidate group as opposed to another. Accordingly, this portion of the protest fails to allege a **Rules** violation, and is hereby **DENIED**.

#### IV. The Conduct of the Nomination Meetings

Mr. Epperson also charges in his post-election protest that Danny Johnson, President of Local Union 41, interrupted his nomination of a Carey/Teamsters for Reform Slate delegate candidate at the November 10, 1990 meeting. Mr. Epperson

asserts that Johnson's conduct caused a chilling effect as to opposition candidates and their supporters.<sup>3</sup>

The facts, as alleged by Mr. Epperson in his January 14, 1991 conference with Election Office Representative, Mr. William O. Eisler, do not indicate that Mr. Johnson's conduct had a chilling effect. According to Mr. Epperson, he and other members of his slate had prepared small note cards, and had planned to make speeches when they rose to nominate candidates.<sup>4</sup>

The Election Office investigation revealed that when the time came to nominate Jim Buck, Mr. Martinez, the designated nominator of Jim Buck, decided that he did not want to make this speech when nominating Mr. Buck. At this point, Mr. Epperson took the card from Mr. Martinez and began to read it. After he read the first sentence, Danny Johnson, Local 41's president and presiding officer at the meeting,

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<sup>3</sup> It should be noted that Mr. Epperson did not file a protest concerning this issue earlier, in accordance with Article XI, Section 1 of the *Rules*.

<sup>4</sup> The note card prepared by the Carey/Teamsters for Reform Slate stated as follows:

It is an honor for me to introduce a man who recognizes that the right to vote for all union officers is a mandatory constitutional issue at the upcoming convention. A man who believes that the right of all Americans to be informed extends even to the union hall. A man who will cast his vote as a delegate for an honest man - the first accredited candidate and the next General President, Mr. Ron Carey - Mr. President (Mr Chairman) I would like to nominate \_\_\_\_\_ as a delegate on the Carey/Teamsters for Reform Slate to our International Convention.

interrupted Mr. Epperson, stating that "he had heard of Carey, who might be a fine person, but he didn't want any campaign speeches, just make your nomination and be done with it." Mr. Epperson, as well as a few other members, responded that the ByLaws permitted campaign speeches. At this point, Mr. Johnson agreed to let Mr. Epperson continue his speech. Mr. Epperson spoke for a few more minutes, and then sat down.

Following Mr. Epperson's nomination of Mr. Buck, several other Local 41 members, including members of Mr. Epperson's slate, rose to nominate additional candidates. Other of these Carey/Teamsters For Reform Slate nominators then read the prepared campaign speech when nominating. None of the nominators for the Danny Johnson Slate made any campaign speech during the nominations process. A total of thirty-one candidates were nominated at this meeting.

Mr. Epperson's nomination for Jim Buck was only briefly interrupted, and there is no evidence to suggest that Mr. Johnson's conduct prohibited, or even deterred, the nomination of additional candidates. Further, campaign speeches were made for several other candidates following the incident described above. Moreover, although Mr. Epperson asserts that Local Union 41's ByLaws permit speaking on behalf of candidates, it is unclear whether the ByLaws permit campaign speeches during the

nomination process.<sup>5</sup> Finally, there is no evidence suggesting that the Carey/Teamsters For Reform Slate candidates, nominators, or seconders were treated differently than other candidates, their nominators, or seconders at the nomination meeting. In fact, the investigation revealed that no other candidate or nominators of candidates other than Carey/Teamsters for Reform candidates attempted to make nomination speeches during the nomination meeting.

The investigation conducted by the Election Officer does not establish that members had a pre-existing right to make campaign speeches during the nomination process. Moreover, even assuming that such a right did exist, there is no evidence that Mr. Johnson's conduct was intentionally directed towards deterring any member from nominating candidates, or that any member's right to participate in the delegate nomination and election process was chilled. Moreover, Mr. Johnson's conduct did not prevent or have the effect of deterring supporters of the Carey/Teamsters for Reform Slate from presenting their nominating/campaign speeches in accordance with their prior plans. Thus, no violation of the *Rules* occurred. Accordingly, the protest regarding the conduct of the nomination meeting is DENIED.

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<sup>5</sup> Section 19(A)(2) of the ByLaws states that "members in attendance at membership meetings shall have the right to express their views, arguments, or opinions upon any business properly before the meeting subject to these Bylaws and the rules and regulations adopted by the Local Executive Board pertaining to the conduct of meetings but no member in exercising such rights shall evade or avoid his responsibility to the organization as an institution or engage in or investigate any conduct with the Local Union's performance of its legal or contractual obligations." Section 19(a)(2), p.25 of the Constitution and ByLaws, Local Union 41 (adopted July 1988).

V. Delayed Posting of Nomination Results

Mr Epperson also alleges that the delayed posting of the nomination results caused confusion about the delegate election process, and constituted a great advantage to the Local Union Officers who were also candidates. This claim is factually identical to the protest filed by Mr. Epperson on November 23, 1990. (See P-063-LU41-MOI). Mr. Savwoir, one of the co-signers to Mr. Epperson's post-election protest also raises an identical claim in (P-071-LU41-MOI).

On November 29, 1990 the Election Officer issued a decision in P-063-LU41-MOI, there was no appeal of that decision. In his decision, the Election Officer found that the failure to timely post constituted a technical violation of the *Rules*. However, he further found that the Local Union did not intend to violate the *Rules*. The violation occurred because the Local Union had been advised, albeit incorrectly, by the Election Office not to post until all pending eligibility challenges were resolved. In the decision in P-063-LU41-MOI, the Election Officer concluded that "any misconception concerning whether an election will occur created by the untimely posting is ameliorated by the fact that this is a mail ballot election." (See, P-063-LU41-MOI, p. 2) Pursuant to a suggestion by counsel Paul Levy, Public Citizen Litigation Group, representing Mr. Epperson with respect to P-063-LU41-MOI, the Election Officer ordered that the mailing

of the ballots be delayed by four (4) days in order to provide additional days of posting and campaigning prior to members receiving ballots.<sup>6</sup>

The delayed posting of nomination results had at most a de minimis effect on the overall campaigning and election process. Mr. Epperson's charge that the delayed posting confused members and aided the Danny Johnson slate is not supported by the facts. The Plan Summary was posted on all Local Union bulletin boards on September 17, 1990. Notice of the election was mailed to all members of Local Union 41 on October 1, 1990. Campaign literature was distributed by both slates, advising members of the fact of the election. Nomination results were posted on most Local Union bulletin boards by November 26, 1990, and on all Local Union bulletin boards by December 4, 1990, nomination results were posted on approximately three hundred bulletin boards prior to the mailing of ballots.

More importantly, any misconception concerning whether an election would occur was ameliorated by the fact that the election was conducted by mail ballot. All eligible Local Union 41 members were sent a mail ballot package, including a ballot and voting instructions. The mail ballot package served as further notice of the fact that the

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<sup>6</sup> In a letter dated November 29, 1990, Mr. Levy requested, on behalf of Mr. Epperson, that the Election Officer delay the mailing of ballots for two to three days, and went on to state that "this might avoid the need to consider this matter in a context where a new election is the only possible remedy." (November 29, 1990 letter from Paul Levy, Public Citizen Litigation Group, to Michael H. Holland, Election Officer, IBT).



delegate election was occurring. The fact that the membership participation in the delegate elections was higher than the membership participation in the Local Union Officer election demonstrates that any potential confusion caused by the delay in posting was cured by subsequent distributions and election events.

Finally, the investigation has uncovered no facts indicating that the delay in posting inured to the benefit of one candidate group as opposed to another. There is absolutely no evidence to demonstrate that the technical violation may have affected the outcome of the election, as required by Article XI, § 1(b)(3) of the *Rules*. Accordingly, the above-described protest is **DENIED**.

#### **VI. Teamster Election News**

Mr. Epperson also protests the distribution of a publication entitled "Concerned Teamster Members", because he believes that it contains distortions about Ron Carey's candidacy, and may be employer-funded. The Election Officer has received several protests regarding this publication, and is actively investigating the distribution of this literature in various IBT Local Unions. Specifically, the Election Officer is investigating the source of funding for the publication. Since our investigation of this publication is not yet completed, the Election Officer will defer making a decision on this issue until such time as the investigation is concluded. Each of the parties listed

above will be notified of a decision with respect to this issue shortly after the conclusion of the investigation.

VII. Concerned Teamster Members Pamphlet

Mr. Epperson also protests the circulation of a flyer which was distributed to Local Union 41 members. The flyer is a one-page document that encourages members to vote against TDU/Carey delegates. In his protest, Mr. Epperson raises the question of whether the flyer was employer or Union funded. Mr. Epperson also alleges that the campaign literature is full of distortions and lies. The investigation conducted by the Election Officer Representative established that the flyer was distributed by supporters of the Danny Johnson Slate. Mr. Epperson submitted no evidence, nor did the investigation reveal that the document was employer or Union funded.

The document in question is being used as campaign literature. The literature in question does not involve the use of Union funds or goods in violation of Article X, § 1(b)(3) of the *Rules*. The fact that the assertions in the questioned campaign literature are allegedly false or even defamatory does not mean that its circulation violates the *Rules*. See, National Assn. of Letter Carriers v. Austin, 418 U.S. 264 (1974) (uninhibited and robust debate encouraged in labor matters, even allegedly defamatory statements permitted). The policy of encouraging robust and uninhibited debate in the

selection of delegates and International Union Officers of the IBT is reflected in the *Rules*, Article VIII, § 6(g), which prohibits the censorship of campaign literature.

Accordingly, the above-described protest is **DENIED**.

**VIII. The Support Danny Johnson Campaign Slate Mailer**

Mr. Epperson also charges that Mr Johnson violated Article VII, § 6 of the *Rules* by mailing out literature which was not properly identified as campaign literature. Mr. Epperson asserts that Mr. Johnson was obligated to formally identify the literature as campaign material because the mailing label and bulk rate-number on the label were the same label and number used on official Union mailings.

Mr Epperson's charges do not constitute a violation under Article VIII for the following reasons: Article VIII, § 6(a)(3) of the *Rules* states:

All literature distributed through use of the non-profit organization bulk-rate permit shall clearly state that it is campaign literature, the contents of which are not endorsed by the Union. (*Rules*, Art. VIII, § 6(a)(3), p. 53.)

The Election Officer investigation revealed that the Johnson mailer was not distributed through use of the Local's non-profit organization bulk-rate permit. Rather,

the investigation conducted by the Election Officer Representative, Mr. William Eisler, revealed that the Local does not even hold a non-profit mailing permit. For its official union mailings, the Local uses the bulk-rate permit owned by the mailhouse. The Johnson mailer was mailed under a bulk-rate permit owned and controlled by the same mailhouse normally used by the Local for Local Union mailings. Local Union 41 used the same mailhouse to distribute official Union mailings. Since this is not a non-profit permit, and since the permit number is owned and controlled by the mailhouse, not Local Union 41, there is no requirement under Article VIII of the *Rules* that any disclaimer appear on the literature.

Mr. Epperson also alleges that the label and statements on the Johnson campaign mailer were misleading because they contained the same information which appeared on the Local Union official mailing of nomination and election notices. The official Union label used for the nomination/election notices contains the Local Union's name and return address, and the following statement: "Important Election Notice: Please Read Immediately". The label on the Johnson mailer contains no return address and the following statement: "24th Teamsters International Convention. Important Delegate Information". I find that the label and words used in the Johnson mailer are neither identical to the official Union label or misleading. I, therefore, find no Rules violation with respect to the above issue.

Mr. Epperson also charges that the Johnson mailer violated the *Rules* because the mailing label itself contained the same computer-coded number as the mailing label used by the Local Union in its mailings of the official Notice of Nominations and Elections. However, this fact does not constitute a violation of the *Rules*. Rather, Article VIII of the *Rules* anticipates that mailing labels used for candidate mailings would be identical to the mailing labels used by Locals for official union notices. The reason for this fact is clear: the TITAN locals obtain mailing labels for both candidate mailings and official Local Union mailings from the TITAN computer system.

Accordingly, Mr. Epperson's claims in reference to the above-described mailing do not constitute a *Rules* violation. Accordingly, the protest is **DENIED**.

**IX. Mr. Savoir's Claim Concerning the Delayed Posting of  
Nomination Results - P-071-LU41-MOI**

On November 29, 1990, Mike Savvoir, one of the co-signers to Mr. Epperson's post-election protest listed above, filed a protest which was deferred under Article XI of the *Rules* (P-071-LU41-MOI). Mr. Savvoir's protest alleges the same claim raised by Mr. Epperson in P-063-LU41-MOI.

Mr. Savvoir's protest alleges that nomination results were not posted on all Local Union bulletin boards in accordance with Article II, § 2 of the *Rules*.<sup>7</sup> Specifically, Mr. Savvoir alleges that of the six bulletin boards at the UPS Lenexa facility, only three boards contained the postings. Mr. Savvoir also charges that only two of the four boards at the UPS James Street location contained postings. Finally Mr. Savvoir alleged that the sole bulletin board at the Consolidated Freightway Terminal did not contain a posting.

The Election Officer investigation revealed the following facts: The nomination meeting was conducted on November 10, 1990. Several eligibility protests were filed against a number of nominated candidates. A representative from the Election Office mistakenly directed the Local to delay the posting of nomination results until all eligibility determinations were resolved. After receiving notice that the posting had not been accomplished, the Election Officer advised the Local on November 21 to post the nomination results, despite the eligibility challenges. Local 41 acted in accord with the Election Officer's directives and had its clerical staff perform the necessary tasks over the Thanksgiving holiday weekend.

Local 41 President, Danny Johnson, thereafter issued a letter on November 23, 1990, to all Stewards instructing them that the nomination results "needs

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<sup>7</sup> Article II of the *Rules*, requires that nomination results must be posted within seven (7) days of the nominations meeting.

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to be posted immediately and 'remain' posted on all Local Union bulletin boards." (November 23, 1990 letter from Danny Johnson to Local Union 41's Stewards.) On November 26, 1990, Danny Johnson also sent a letter to all Business Agents instructing them that "it is imperative that you check with your Stewards, and be sure that this listing is posted and remains posted throughout the election process." (November 26, 1990 letter from Danny Johnson to Local 41 Business Agents)

On December 3, 1990, William Eisler, Election Officer Representative, met with Dennis Speak, Local Union Secretary-Treasurer, and Mary Schaeffer, the Local's secretary in reference to Mr. Savvoir's protest. During this meeting, Mr. Speak reported that there were over 300 Local Union bulletin boards and that members historically removed postings and candidate literature from bulletin boards.

Immediately following this meeting, Mr. Eisler visited the Consolidated Freightway facility to verify Mr. Savvoir's allegations, where he observed that the nomination results were posted on the Local Union bulletin board at that facility.

In furtherance of his investigation, Mr. Eisler again met with Mr Speak, Ms. Schaeffer, and Ken Standly, a Local 41 Business Agent responsible for UPS on December 4, 1990. At this meeting Mr. Standly reported that there were a total of five bulletin boards at the Lenexa UPS facility and two Union bulletin boards at the James Street UPS facility and that nomination notices remained posted at all times on Union

bulletin boards at those facilities. Mr. Standly also reported that the stewards at each of the other UPS facilities verified that the nominations results were posted in accordance with Mr. Johnson's November 23, 1990 directive and had remained posted. Mr Standly further stated that there are a number of bulletin boards at both the Lenexa and James Street facilities that are designated for Company use only. No nomination notices were posted on these bulletin boards

The Election Officer investigation reveals that the requisite notice at the Consolidated Freight facility was posted on the bulletin boards. Thus, Mr. Savvoir's charge with reference to this issue is denied.

With reference to the two UPS facilities at Lenexa and James Street, the facts are undisputed that at least five out of ten bulletin boards contained the necessary postings. No evidence has been submitted to demonstrate that the additional bulletin boards were in fact Union bulletin boards. Moreover, assuming that the additional bulletin boards were designated as local bulletin boards, and therefore should have contained the posting, I do not find that the lack of posting affected the outcome of the election. In reaching my decision, I incorporate the rationale set forth in Section V above and also note that the Election Officer ordered that the mailing of the ballots be delayed to permit additional time for campaigning.



Finally, I find that Local 41 exercised due diligence in their efforts to post the nomination notices on all Local Union bulletin boards. The fact that this was a mail ballot election demonstrates that any potential confusion caused by the delay, or failure to post on five out of three hundred bulletin boards was alleviated by the fact that all eligible members were further apprised of the election when they received mail ballots. Accordingly Mr Savvoir's protest is DENIED.

**X. Conclusion**

Of all the allegations raised in both the post-election and deferred pre-election protests considered here, only two technical violations of the *Rules* have occurred.<sup>8</sup> The two technical violations found here concerned the lack of notice to Local members; i.e., lack of notice that there would be delegate elections separate from the Local Union Officer elections and that the delegate elections would be contested. In both instances, the import was that the Local's members would know neither that there would be an election nor that the elections would be contested and the identity of the contestants, and accordingly, the members would not participate in the process. That these violations were cured prior to the election and thus could not have affected the results of the

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<sup>8</sup>Events or incidents which individually do not constitute a violation of the *Rules* cannot be the basis for setting aside the results of an election whether viewed singularly or cumulatively.

election is demonstrated by the fact that there was greater participation in the delegate election process than in the Local Union Officer elections.

Article XI, § 1(b)(2) of the *Rules* provides that: "Post-election protests shall only be considered and remedied if the alleged violation may have affected the outcome of the election " (Article XI, § 1(b)(2) of the *Rules* ) For a violation to have affected the results of the election, there must be a meaningful relation between a violation and the results of the election See Wirtz v. Local Unions 410, 410A, 410B & 410C, International Union of Operating Engineers, 366 F.2d 438 (2d Cir. 1966). As noted above, the only violations found with respect to the above described protests concern the incomplete postings and the misleading language in Local Union Officer nomination notices and are directed to the level of participation in the process. These violations, given the level of participation here, could not have affected the results. The evidence of this case fails to demonstrate that there is any reasonable probability that the relatively minor violations found above may have affected the outcome of the election. (See Dole v. U.S. Mail Handlers, Local Union 317, 132 L.R.R.M. 2299 (M.D. Ala. 1989)

Accordingly, Mr Epperson's post-election protest and Mr Savvoir's deferred protest are DENIED.<sup>9</sup>

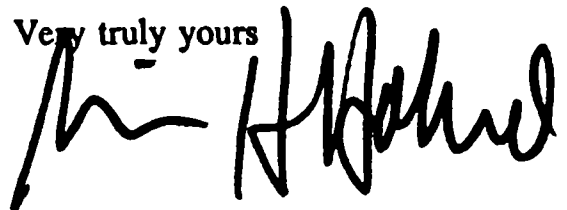
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<sup>9</sup> In accordance with Section VII above, the Election Officer will retain jurisdiction of this matter with respect to the "Teamsters Election News" literature. If a decision that the publication and distribution of that literature is found violative of the *Rules*, this post-election protest will be reopened to determine whether that violation affected the outcome of the Local 41 delegate and alternate delegate election.

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If any person is not satisfied with this determination, he may request a hearing before the Administrator within seventy-two (72) hours of his receipt of this letter. Such request shall be made in writing and shall be served on Administrator Frederick B. Lacey at LeBoeuf, Lamb, Leiby & MacRae, One Gateway Center, Newark, N J 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. 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.

Very truly yours



Michael H Holland

Election Officer

MHH/ads

cc Frederick B Lacey, Independent Administrator, IBT  
William O. Eisler, Election Officer Representative

OFFICE OF THE ELECTION OFFICER  
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
25 Louisiana Avenue, NW  
Washington, DC 20001

LU41

Michael H. Holland  
Election Officer

(202) 624-8778  
1-800-828-6496  
Fax (202) 624-8792

May 22, 1991

**VIA UPS OVERNIGHT**

Wesley Epperson  
1702 Evanston  
Independence, MO 64052

Dan Johnson  
President  
IBT Local Union 41  
4501 Van Brunt Boulevard  
Kansas City, MO 64130

**Re: Election Office Case No. Post-1-LU41-MOI**

Gentlemen:

On February 7, 1991, the Election Officer issued his determination in the above referenced post election protest. Among the allegations raised in the protest was the claim that the Election Rules were violated as a result of the distribution of a piece of campaign literature entitled "Teamster Election News" and such violation may have affected the outcome of the Local Union 41 delegate election. In the February 7, 1991 decision, the Election Officer determined that he would retain jurisdiction over the claim to determine whether the literature is violative of the Election Rules and whether such violation may have affected the outcome of the delegate election.

The investigation by the Election Officer of this portion of the post-election protest reveals the following. The Teamster Election News is a four page tabloid published by R L. Communications of Detroit, Michigan. The publication is critical of Ron Carey and his candidacy for General President of the IBT.

The "Teamster Election News" was distributed outside the entrance to of the Local Union hall on December 8, 1990 prior to a regular Local Union business meeting. The meeting was held on the second floor of the Union hall while the literature was distributed outside the building itself. The protester does not allege, and the Election Officer does not find, that other members of the Local Union were denied a similar opportunity to distribute campaign literature outside of the Local Union hall.

Article VIII, Section 10 (a) of the Election Rules guarantees the right of IBT members to participate in campaign activities, including the distribution of campaign literature, in support of, or in opposition to, any candidate for delegate or International Office in the IBT. Article VIII Section 10 (d) provides, inter alia, that no restrictions

shall be placed on a member's pre-existing right to engage in campaign activity on employer premises.

Copies of the "Teamster Election News" that were distributed were purchased from R L. Communications with funds raised by members and supporters of the Danny Johnson Candidates Slate. No Union funds were utilized.

The protest also alleges that the funds for the preparation and initial printing of the "Teamster Election News" by R.L. Publications may have been obtained from persons or entities prohibited from making campaign contributions under Article X, of the *Rules*. In the investigation of this protest, and other protests concerning the "Teamsters Election News", the Election Officer is examining the source(s) of funding of the publication and distribution of "Teamsters Election News" by R L. Communications. The Election Officer has concluded that if the publication and distribution of the Teamster Election News involved the use of Union or employer contributions in violation of the Election Rules, such violation can and will be remedied by a reimbursement, with interest, of the prohibited contributions. Such remedy and, if appropriate, other remedies directed to R L. Communications and the Union and/or employers making improper contributions are sufficient under the *Rules* to eradicate any such violations. See, e.g. Election Office Case No. P-249-LU283-MGN.

The protestors also object to the content of the "Teamster Election News". However, underlying the Election Rules is a firm policy against censorship or the regulation of the content of campaign literature. Article VIII, Section 6 (g) of the Election Rules specifically states that "[t]he Union may not censor, regulate, alter or inspect the contents of any candidate's campaign literature. The Union may not refuse to process or distribute any candidate's literature on the basis of its contents." This policy reflects the right of union members to engage in vigorous internal union debate free from the threat of internal union discipline for their campaign statements. See, eg, Petramale v. Laborers Local 17, 736 F. 2d 13 (2nd Cir. 1984); Semancik v. UMW District 5, 80 LRRM 3475 (3rd Cir. 1972); Salzhandler v. Caputo, 316 F 2d 445 (2nd Cir. 1963). Similarly, the United States Supreme Court has recognized labor disputes ". . . are frequently characterized by bitter and extreme charges, countercharges, unfounded rumors, vituperations, personal accusations, misrepresentations and distortions. Old Dominion Branch No. 496 v. Austin, 418 U.S. 264, 272 (1974).

The fact that the campaign statements contained in the "Teamsters Election News" were allegedly false or even defamatory does not remove such literature from the protection of the *Rules*. The model for free and fair Union elections is that of partisan political elections. In those elections, contestants are generally allowed to make whatever assertions, allegations, statements of opinion or even of alleged facts without legal sanctions for their or falseness. The cardinal principle is that the best remedy for untrue speech is more free speech, with the electorate being the final arbiter.

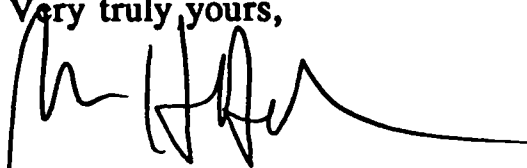
Wesley Epperson  
Page 3

The *Rules* provide that at a protest determined post-election will not be remedied unless the challenged conduct may have affected the outcome of the election. *Rules*, Article XI, § 1(b)(2). For the challenged conduct to be considered to have the required effect, there must be a reasonable probability that the outcome of the election would have been different but for such conduct. Wirtz v. Local Unions 410, 410A, 410B & 410C, International Union of Operating Engineers, 366 F.2d 438 (2nd Cir. 1966). Given the results of this election with the large margin between the winning and losing candidates, and given that any improprieties in funding will be subject to remedies sufficient to eradicate the effect of any violation, no basis exists sufficient to justify a conclusion that the results of the election were affected. In other words, no basis exists for concluding that there was a causal connection between the alleged violation and the results of the election sufficient to justify setting aside the election. Dole v. Mailhandlers, Local 317, 132 LRRM 2299 (M.D. Alabama 1989).

For the forgoing reasons the instant 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  
Election Officer

MHH/mjv

cc: Frederick B Lacey, Independent Administrator, IBT  
Michael D. Gordon, Regional Coordinator