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Michael H Holland  
Election Officer

February 22, 1991

**VIA UPS OVERNIGHT**

James E Tol  
788 Bungalow, S W  
Wyoming, MI 49509

Clifford J Mulder  
3930 Hazelwood Avenue, S.W  
Wyoming, MI 49509

Thomas Sleder  
626 Horn Road  
Lake Leelanau, MI 49653

Dennis Childs  
c/o 406 Teamsters for  
Ron Carey Slate  
5151 Wilhelm Road  
Rapid City, MI 49676

Ken DeVries  
Secretary-Treasurer  
IBT Local 406  
3315 Eastern Avenue, S E  
Grand Rapids, MI 49508

Denny Broughan  
c/o New Direction Slate  
509 Burton Street, S E  
Grand Rapids, MI 49507

Ron Telman  
Route #2  
West Olive, MI 49460

**Re: Election Office Case No. Post 10-LU406-MGN**

Gentlemen:

A post-election protest has been filed pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*"). In their protest, Messrs. James E Tol and Clifford J Mulder allege that the outcome of the election in Local 406 has been affected by the following pre-election conduct (1) Mr. Kenneth De Vries, the Secretary-Treasurer of the Local filed frivolous eligibility challenges, and delayed the election process to his advantage, (2) the results of the nominations meeting in Local 406 were not posted on the Local Union bulletin boards as required by the *Rules*, (3) the ballots included the names of Lisa Plamandon and Robert Schmeltzer, two delegate candidates ultimately found to be ineligible to run for the position of delegate, (4) the Election Officer failed to rule on Clifford Mulder's eligibility within the five day time period as required by the *Rules*, (5) the Election Officer permitted Tom Hohman to change his slate affiliation prior to the election, and (6) the ballot was improperly formatted.

The election was held via mail ballot. The ballots for Local 406 were mailed on December 31, 1991.

The ballot identified three slates and two independent candidates for the membership vote. The Local 406 Teamsters for Carey Slate listed candidates Lisa Plamandon and Robert Schmeltzer as slate members. On January 3, 1991, after the ballots were mailed, a decision issued finding that these two candidates were determined ineligible to run for the position of delegate. See E-132-LU406-MGN.

Candidate Lisa Plamandon received 227 votes and candidate Robert Schmeltzer received 160 votes. The Local voted for nine delegates and three alternates. Only fourteen votes separated the losing delegate candidate with the highest number of votes (Mr. Hohman) from the winning delegate candidate with the lowest number of votes (Mr. Broughan). Thus, it is clear that the numbers of votes received by candidates Plamandon and Schmeltzer could have affected the outcome of the election. If they, or either of them had not been on the ballot, the votes they received would have been voted for other delegate candidates. If fifteen of the ballots voted for either ineligible candidate had been voted for Mr. Hohman, he would have received more votes than Mr. Broughan.

Based on the foregoing, the Election Officer voids the Local 406 election and directs a new election to be held under the supervision of the Election Officer.<sup>1</sup> See Marshall v. Paperworkers, Local 334, 32-5009, 77 L M 283, No. 77-1780 (D.N.J., filed August 26, 1977). Such election shall be conducted among those candidates previously nominated, with the exception of the two nominees found to be ineligible.

Given his decision with respect to the issue discussed above, the Election Officer finds it unnecessary to decide the other allegations raised in the protest.<sup>2</sup>

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)

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<sup>1</sup>The Election Officer, in accordance with Article XI, Section 3 of the *Rules*, will determine the details of the election, such as the date of mailing of ballots, the date of the count, and the ballot format, as well as the extent and content of appropriate pre-election postings and notices. The Election Office will notify all of the above-noted addressees of this information.

<sup>2</sup>With respect to the alleged lack of proper posting of the list of nomination results and the formatting of the ballot, see footnote 1 above.

James E. Tol  
Page 3

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. Hollan

MHH/ads

cc Frederick B Lacey, Independent Administrator  
James De Haan, Regional Coordinator

IN RE:	:	91 - Elec. App. - 85 (SA)
	:	
JAMES E. TOL,	:	
CLIFFORD MULDER,	:	
	:	
Complainants,	:	
	:	DECISION OF THE
and	:	INDEPENDENT ADMINISTRATOR
	:	
KEN DeVRIES,	:	
IBT LOCAL UNION NO. 406,	:	
	:	
Respondents.	:	

This matter arises out of an appeal from a February 22, 1991, decision of the Election Officer on a post-election protest in Case No. Post-10-LU406-MGN. A hearing was held before me by way of teleconference on March 1, 1991, at which the following persons were heard: the complainants, James E. Tol and Clifford Mulder; Ken DeVries, Secretary-Treasurer of Local 406; Karl Scholbey, the President of Local 406; Barbara Hillman, on behalf of the Election Officer; and delegate candidates Paul Gardner, Gene Davis, and Pat Pitsch.

This post-election protest was filed by two members of Local 406, neither of whom are candidates for delegate or alternate delegate in the election conducted with respect to the Local. The protest alleges that members of Local 406 were deprived of a fair and honest election by pre-election conduct of Local Officers and by rulings of the Election Officer. More specifically, the complainants allege: (1) that the election process was delayed by

frivolous eligibility challenges; (2) that the results of the nominations meeting were not properly posted; (3) that the Election Officer's ruling on the eligibility of one of the protestors was untimely; (4) that one candidate was improperly allowed by the Election Officer to change his slate affiliation; (5) that the format of the ballot was improper; and (6) that two candidates subsequently ruled ineligible appeared on the ballot.

The Election Officer, finding merit to this last allegation, invalidated the election, finding that the presence on the ballot of two ineligible candidates may have affected the outcome of the election. The Election Officer ordered that the election be rerun. The Election Officer did not order a new nominations meeting but determined that the rerun election be held among the eligible candidates previously nominated. Both the complainants and the incumbent Secretary-Treasurer of the Local, Mr. DeVries -- a successful delegate candidate in the original election -- appeal the Election Officer's ruling.

The election for nine delegates and three alternate delegates was held by Local 406 by mail ballot. Ballots were mailed on December 31, 1990. The ballot listed three slates and two independent candidates. In response to a protest filed by Mr. DeVries, the Election Officer determined that two candidates listed on the "Local 406 Teamsters For Carey" slate -- Lisa Plamondon and Robert Schmeltzer -- were not eligible to run for the position of delegate. Unfortunately, the Election Officer's determination was

not issued until January 3, 1991, after the ballots had already been mailed. Neither Ms. Plamondon nor Mr. Schmeltzer sought a pre-election determination of their eligibility as urged by the Rules for the IBT International Union and Delegate Officer Election ("the Election Rules"). This process was invoked by a substantial number of other candidates in the Local. In fact, during the pre-nomination process 22 prospective candidates requested verification of their eligibility to run as candidates for delegate or alternate delegate in accordance with the Election Rules. Moreover, Mr. DeVries protested the eligibility of an additional 33 candidates as well as their nominators and seconders. Given the vast number of eligibility determinations that the Election Officer was required to make in this Local, his failure to issue an eligibility determination on Ms. Plamondon and Mr. Schmeltzer, prior to the mailing of the ballots, is both understandable and excusable.

The election vote was very close. In a ranking of candidates by number of votes garnered, only 77 votes separated the top 18 candidates. Even more dramatically, only 14 votes separated the lowest ranking winner from the highest ranking loser. The two ineligible candidates received a total of 387 votes -- 227 for Ms. Plamondon and 160 for Mr. Schmeltzer. It is incontrovertible that the 387 votes received by these two candidates could have affected the outcome of the election if they had been cast for other candidates. In the Election Officer's summary it is stated that:

In elections governed by the Labor-Management Reporting and Disclosure Act, 29 U.S.C. §§ 401, et seq., it is well established that union elections will be rerun if the conduct complained of "may have affected the outcome of an election." 29 U.S.C. § 482(c)(2); see also 29 C.F.R. § 452.5. In this case, as strictly a mathematical proposition, the number of ballots cast for ineligible candidates could certainly have affected the outcome of the election. As one court determined in analogous circumstances where votes were cast by members who were ineligible to vote, "if the number of ineligible votes cast is sufficient to make it mathematically possible that the outcome of the election was affected, this fact alone conclusively establishes the . . . requirement that the conduct complained of may have affected the outcome of the election." Wirtz v. Local Union No. 125, Int'l Hod Carriers' Building and Common Laborers' Union, 270 F. Supp. 12, 62 LRRM 2141, 2148 (N.D. Ohio 1966). In this case, the effect on the election results is conclusively established.

Accordingly, the Election Officer invalidated the election and directed a new election to be held under his supervision.

Mr. DeVries challenged the Election Officer's ruling claiming that the Election Officer's failure to issue a timely ruling on the eligibility of Ms. Plamondon and Mr. Schmeltzer led to their inclusion on the ballot. In addition, Mr. DeVries argued that "no one involved with the election" protested the results. Moreover, Mr. DeVries raises concerns relating to the cost of a rerun election to both the candidates and the Local.

With regards to Mr. DeVries' first argument, the fact that the Election Officer did not issue a "pre-election" decision on eligibility regarding Ms. Plamondon and Mr. Schmeltzer does not alter the fact that ineligible candidates were placed on the ballot. The failure of the Election Officer to process the



eligibility protests in a more timely fashion does not in any way waive the eligibility requirements for delegates.

As for Mr. DeVries' suggestion that the election should not be rerun because "no one involved with the election" protested the results, he overlooks the fact that two members of the Local have filed a protest regarding the outcome of the election. The members of the Local certainly have a direct and essential interest in the outcome of their delegate elections.

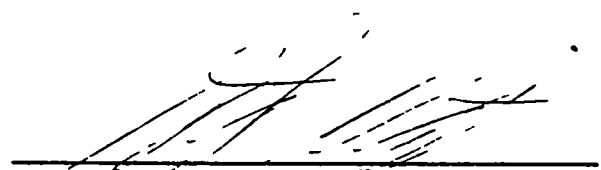
Lastly, as to the cost to the candidates and to the Local when one weighs the additional cost that may need to be incurred in conducting a rerun election against the goal of ensuring "fair and honest and open elections," the scale tips heavily in favor of conducting a rerun election.

The complainants argue that the Election Officer should address all of their concerns and not just rule on the charge that Ms. Plamondon and Mr. Schmeltzer improperly appeared on the ballot. The complainants suggest that a decision on all issues should be entered so that a determination can be made whether the incumbent officers have interfered with the proper conduct of the election. If the incumbent officers are found to have acted improperly, the complainants argue that the members should be aware of such conduct and it should become an issue in the rerun campaign. In addition, the complainants suggest that to the extent that the incumbent officers interfered with the election process, they should be declared ineligible to run in the rerun election.

First, neither the Election Officer nor the Independent Administrator is obligated to issue declaratory rulings for the purpose of furthering or advancing a person's particular campaign. As for the suggestion that the Election Officer should declare the incumbent officers ineligible, the Election Officer noted that in an appropriate case, where conduct is especially egregious, he may declare a candidate ineligible. The Election Officer here concluded, however, that even if he were to find merit to complainants' other protests, the conduct complained of would not rise to a level warranting a determination of ineligibility.

In short, the remedy ordered by the Election Officer here renders the other issues raised by the complainants moot.<sup>1</sup>

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



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

Dated: March 5, 1991.

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<sup>1</sup> As for the contention that the Election Officer improperly permitted one candidate to change his slate affiliation, the Election Officer investigated this issue "pre-election" and notified the head of each slate that he found no merit to the contention. No protest was filed as a result of that decision.