

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

Michael H. Holland
Election Officer

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

May 21, 1991

VIA UPS OVERNIGHT

Jerry Halberg
c/o IBT Local Union 174
553 John St
Seattle, WA

Allen McNaughton
Secretary-Treasurer
IBT Local Union 174
98109 553 John St
Seattle, WA 98109

Robert A. Hasegawa
Pro-Union Democracy Slate
Evergreen Chapter
3121 - 16th St
Seattle, WA 98144

Re: Election Office Case No. Post-32-LU174-PNW
P-497-LU174-PNW

Gentlemen

A post-election protest was filed by Mr. Jerry Halberg on February 20, 1991 pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") alleging generally that the Teamsters for a Democratic Union (TDU) improperly provided financial assistance to the campaign of a slate of delegates in the election conducted in Local Union 174, and that such financial contributions constitute improper employer assistance.

A pre-election protest was filed by Robert A. Hasegawa, which protest was deferred by the Election Officer for post-election consideration. Mr. Hasegawa's protest alleges that the slate of delegates and alternate delegates, the TRUTH Slate, opposing his slate had apparently been endorsed, and publicized the endorsement, of Rick Bender,

Executive Secretary of the Seattle-King County Construction Building Trades Council Mr Hasegawa contended that such endorsement constituted an improper contribution to the TRUTH Slate.

The election count at Local 174 took place on February 25, 1991. The Local was to elect seven delegates and two alternates to the 1991 IBT International Convention. In addition to two independent candidates for delegate and one independent candidate for alternate, there were two slates vying for election, the TRUTH Slate, headed by Secretary-Treasurer Allen McNaughton and including Mr Halberg, and the Pro-Union Democracy (PROUD) Slate, headed by Mr Hasegawa. The results of the election were as follows

Delegate Candidates

PROUD Slate

Bob Hasegawa	1194
Ron Schick	1118
Dale H Kallenberger	1107
Charles E Bowman	1068
Chet Harty	1057
Arthur Mittleider	1023
Richard Kraft	1025

TRUTH Slate

Arlyn Overstreet	689
Clint Copeland	679
Al McNaughton	678
Rod Schmidt	673
Larry Stochser	631
Jerry Halberg	626
Alberto Ramirez	599

Independents

Dana E Moore	202	Chuck Bixby	128
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Alternate Delegate Candidates

PROUD Slate

Connie McArthur	1125
Doug Frechin	993

TRUTH Slate

Tim Sullivan	681
Lynn Matteson	561

Independent

Roger L Nichols 141

I. Mr. Halberg's Protest

Election Officer representatives conducted an investigation with regard to the allegations of Mr Halberg. Mr Halberg and his attorney were asked to supply any specific allegations with regard to funding provided to the PROUD Slate by TDU

Despite repeated requests for such specific information, no such information was provided other than copies of literature that were distributed by the PROUD Slate during the election. Members of the PROUD Slate responded that they had received no funds from TDU and that the distribution of their campaign literature as well as their other activities were funded completely by donations from individual members of Local 174.

The PROUD Slate members in the instant case deny and the investigation does not show that the PROUD Slate received any monetary contributions from TDU. PROUD Slate representatives admitted, however, that the PROUD Slate received prototype flyers from TDU which had been prepared by the TDU national staff specifically for the Local 174 delegate election. These flyers were prepared in response to requests from the PROUD Slate and were prepared to respond to a flyer attacking Carey which had been distributed by the opposing slate. The investigation confirms that the TDU national staff prepared and sent to PROUD members single copies of the flyers, which then were reproduced and distributed at the expense of the members of the PROUD Slate.

The *Rules* prohibit any candidate from accepting or using campaign contributions from an employer, the union or any other labor organization. *Rules*, Article X §1 (b). However, contributions may be made by a caucus or organization of Union members, provided that such caucus or organization is itself properly financed, even if that caucus or organization could otherwise be considered an employer. *Rules*, Article 10 §1 (b)(5).

The Election Officer's investigation disclosed that TDU is an organization of union members. Thus it may make campaign contributions under the *Rules*. See e.g. Election Officers Commentary on Final IBT Election Rules, Item 20 at page 28. To the extent that TDU has received improper contributions, contributions not in compliance with the *Rules*, the Elections Officer has directed that TDU repay, return or otherwise disgorge such improper contributions. See Election Officer Case No P-249-LU283-MGN, a determination which was reached on May 21, 1991. The Election Officer has concluded that the remedy imposed in Election Office Case No P-249-LU283-MGN is sufficient under the *Rules* to eradicate the effect of TDU's violation.

Further, the contribution made by TDU to the PROUD Slate comprised only a small portion of the totality of the contributions, both monetary and otherwise, utilized by the PROUD Slate in its campaign. As noted above, the opposition slate distributed its campaign material attacking Ron Carey, the IBT General President candidate to whom the PROUD Slate was committed. There is no evidence of unequal access to the membership or an unequal opportunity to distribute literature. The major financing for the literature distributed here was borne by the PROUD Slate. The costs and burdens of distributing it were similarly borne. The contribution by TDU was providing the prototype of the campaign material, later duplicated and distributed by the PROUD Slate with such slate's own resources.

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, a margin of almost 2 to 1, the contribution made by TDU in preparing the prototype flyers, even if violative of the *Rules*, is insufficient 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).

Based on the foregoing, the protest of Mr Halberg is DENIED

II. Mr. Hasegawa

Mr Hasegawa's protest concerns the endorsement of the TRUTH Slate by Rick Bender in his capacity as Executive Secretary of the Seattle-King County Construction Building Trades Council. Mr Hasegawa contends that such an endorsement constitutes a contribution to the TRUTH Slate. He argues that Mr Bender is an employer and thus the contribution violates the *Rules*.

The protest was deferred by the Election Officer for post-election consideration. The *Rules* provide that "Post-election protests shall only be considered and remedied if the alleged violation may have affected the outcome of the election." *Rules*, Article XI, § 1 (b)(2).

Mr Hasegawa and all members of his slate, the PROUD Slate, were the winning delegate and alternate delegate candidates in the election. The outcome of the election could not have been affected by the alleged improper contribution of Mr. Bender, even assuming that such contribution constituted a violation of the *Rules*. The Election Officer has also denied the post-election protest filed with respect to the delegate and alternate delegate election for Local Union 174, no rerun election is being conducted.

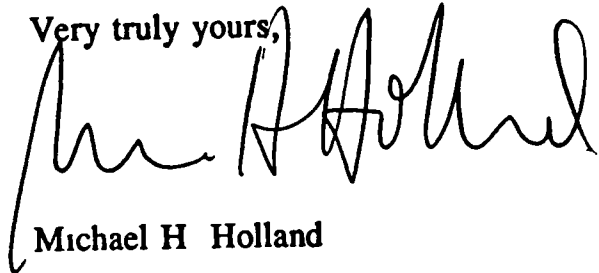
Under these circumstances - no affect on the election result and no rerun election - Mr Hasegawa's protest is moot. On this basis, such protest is DISMISSED.

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

Jerry Halberg
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& 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,

A handwritten signature in black ink, appearing to read "Michael H. Holland". The signature is written in a cursive style with a large initial "M" and "H".

Michael H Holland

MHH/cdk

cc Frederick B Lacey, Independent Administrator
Christine M Mrak, Regional Coordinator

Enclosure Decision in Election Officer Case No P-249-LU283-MGN

IN RE:

JERRY HALBERG

and

IBT LOCAL UNION NO. 174

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: 91 - Elec. App. - 154 (SA)
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DECISION OF THE
INDEPENDENT
ADMINISTRATOR

This matter arises out of a challenge to a decision of the Election Officer in Case No. Post-32-LU174-PNW. A hearing was held before me by way of telephone conference on June 3, 1991, at which the following persons were heard: Jerry Halberg, the complainant; Robert Hasegawa, a successful delegate candidate; and John J. Sullivan and Barbara Hillman, on behalf of the Election Officer. In addition, an attorney, James Oswald, also participated in the hearing. By letter to the Independent Administrator dated May 29, 1991, Mr. Oswald indicated that he was "writing on behalf of Jerry Halberg . . ." At the outset of the hearing, Mr. Oswald argued in favor of Mr. Halberg's position. Towards the end of the hearing, however, Mr. Oswald stated that he was, in fact, representing the interests of Local 174 and that Mr. Halberg was representing himself.

Mr. Halberg's protest was dated February 20, 1991. The ballots in the delegate and alternate delegate election in Local 174 were counted on February 25, 1991. The Election Officer's records reveal that he received Mr. Halberg's protest on February

27, 1991 -- after the ballots were counted. Mr. Halberg contends, however, that he telefaxed a copy of his protest to the Election Officer, suggesting that the Election Officer received the protest prior to the counting of the ballots.

Mr. Halberg's attempt to create issue as to when his protest was received goes to the treatment of the protest as a post-election protest pursuant to Article XI, Section 1.b.(2) of the Rules For The IBT International Union Delegate And Officer Election (the "Election Rules"). Having received the protest after the counting of the ballots, the Election Officer necessarily treated that protest as a post-election protest. Even if the protest was received by the Election Officer on February 20, 1991, the Election Officer would still have the option of addressing the protest in a post-election context. See Election Rules, Article XI, Section 1.a.(4)(b). As explained at the hearing by the Election Officer, if the protest was received on February 20, 1991, he would have deferred making a determination on the protest given the close proximity to the actual ballot count. Thus, whether Mr. Halberg's protest was received on February 20, or February 27, it was properly treated as a post-election protest. As a post-election protest, it "shall 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).

In his Summary, the Election Officer provides the necessary details of Local 174's election:

Local 174 elected seven delegates and two alternate delegates to the Convention. In addition to three independent candidates, two slates appeared on the ballot: the Pro-Union Democracy ("PROUD") Slate and Mr. Halberg's TRUTH Slate. The PROUD slate associated with TDU won by a substantial margin. The margin of victory between the PROUD Slate candidate with the fewest votes (Richard Kraft with 1,025 votes) and the TRUTH Slate candidate with the most votes (Arlyn Overstreet with 689 votes) was 336 votes.

Mr. Halberg alleged that the Evergreen Chapter of TDU in Western Washington received campaign contributions from TDU in violation of the Election Rules which prohibit contributions from employers. Election Rules, Article X, Section 1.a. Mr. Halberg further suggested that those improper contributions were eventually passed on to the PROUD Slate.

With one very narrow exception, which is discussed later on, Mr. Halberg was unable to provide the Election Officer with any specifics to support his contentions. Notwithstanding Mr. Halberg's failure to provide the Election Officer with any reasonable basis for his contentions, he objected to the fact that the Election Officer did not conduct an audit of the PROUD Slate's books and records.

In the first instance, the Election Officer is not obligated to conduct audits of an opposing slate if he determines that there is no good-faith basis to do so. To impose an obligation on the Election Officer to respond to every request for a detailed review of an opposing slate's books and records would invite abuse of the protest process.

As to the one exception mentioned earlier, Mr. Halberg did provide the Election Officer with copies of literature distributed by the PROUD Slate during its campaign. Relying on the quality of the literature, Mr. Halberg contended that the PROUD Slate could not afford to produce such literature on its own and thus must be receiving illegal contributions from the Evergreen Chapter of TDU.

As explained by the Election Officer in his Summary:


Members of the PROUD Slate, on the other hand, denied that any monetary contributions were received from TDU. However, they acknowledged that they had requested TDU staff to prepare a prototype campaign leaflet for the Local 174 election to respond to campaign material distributed by the TRUTH Slate to attack Ron Carey, the candidate for General President associated with TDU. TDU developed the fliers as requested and sent single copies of same to the PROUD Slate, which reproduced and distributed the fliers at the expense of members of the Slate.

Assuming for purposes of this analysis that the preparation of the PROUD Slate's literature by the TDU staff constituted an improper campaign contribution, such a violation of the Election Rules need not be addressed in this post-election setting given that it may not have "affected the outcome of the election." As stated by the Election Officer in his Summary:

The contribution made by TDU to the PROUD Slate constituted only a minimal portion of the monetary and other contributions utilized by the slate in its campaign. Moreover, the major expense of reproducing and distributing the leaflets prepared by TDU was borne by the PROUD Slate with its own resources. Finally, the opposing slate had ample access to the membership and had, in fact, addressed the issue featured in the PROUD literature by distributing its own campaign material on the issue. Consequently, there is no question of unequal

opportunity to communicate with the membership, especially on the particular issue involved.¹

Accordingly, for the reasons expressed herein, the denial of Mr. Halberg's protest is affirmed.



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

Date: June 4, 1991

¹ To the extent the TDU has received any improper contributions, the Election Officer has directed TDU to disgorge and repay such contributions with interest. See May 21, 1991, Decision of the Election Officer in Case No. P-249-LU283-MGN. That Decision has been appealed to the Independent Administrator and is currently under review.