



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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April 24 1991

VIA UPS OVERNIGHT

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**Re Election Office Case No Post-40-LU2707-CLA**

Gentlemen

A post-election protest was filed pursuant to Article XI § 1 of the *Rules* for the IBT International Union Delegate and Officer Election revised August 1 1990. The Complainant Larry Holden is a member of IBT Local 2707. He lives and works in Guam as do approximately 460 other Local 2707 members.

The Complainant asserts that he did not receive timely notice of the nominations

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meeting for the delegate and alternate delegate election in Local 2707 and was therefore precluded from participating in the nomination process. He states that he first learned of the nomination meetings when a notice was posted at his worksite on January 17, 1991 giving the results of the nominations meeting.

The nominations meeting was held on January 2, 1991. The number of members nominated at the meeting did not exceed the number of delegates and alternate delegates to be elected. Therefore, the election was uncontested and the delegate election scheduled for March 5, 1991 was unnecessary. *Rules*, Article II, § 6

The Election Officer's investigation found the following: The nominations notice were printed in the December issue of the *Southern California Teamsters*. The newspaper was mailed to Local 2707 members in the continental United States by regular newspaper delivery. However, with respect to its Guamanian members, the Local paid its mailing house (Oxford Argonaut Mailers) to insert the newspaper into an envelope with the Local's address as the return address on the envelopes. The mail house then mailed copies of the newspaper to the members in Guam by first class air mail.

The mailing took place on approximately December 13, 1991. According to the Consumer Affairs Division of the General Mail Facility in Los Angeles, California, first class air mail takes anywhere from three to four days to a week to arrive in Guam. Therefore, copies of the notice of nomination should have arrived in Guam no later than December 20, 1991. Thus, given the procedures under the *Rules* for absentee

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nominations and seconds, *Rules* Article II, § 3(f), there was time for Local 2707 members in Guam to participate in the nomination process.

The *Rules* require that notice of the nomination meetings be given by any means "reasonably calculated to inform all members in sufficient time to permit them to nominate " *Rules*, Article II, § 3(d) Thus, under the *Rules*, mailing the nomination notice to each member at his/her last known address is unnecessary. It is only the election notice which must be mailed to each member at his/her last known address. *Rules*, Article II, § 5(d) see also 29C FR § 452 56 and § 452 99 contrasting and comparing the different requirements under Federal law for nomination and election notices

Here, however, the Local met the more stringent requirements of election notices when providing the notice of nominations to its Guamanian members Both the *Rules* and Federal administrative law expressly sanction mailing to the last known home address as sufficient. These standards were met in this case.

The Election Officer's staff contacted a number of Guamanian members of the Local who recalled receiving the December, 1990 issue of the Southern California Teamsters The investigation by the Election Officer also revealed, however, that Local Unions' records, and particularly its TITAN records, from which the mailing labels were produced, may not have contained incorrect addresses for certain of the Local's members living on Guam The protester's address was wrong, apparently the address listings for

additional members were also incorrect.

There is no allegation or evidence, however, that Local 2707 had any information which should have led it to update the addresses in the TITAN system. The *Rules*, in accordance with Department of Labor regulations, provide that the address to be used is the "last known address." While the Election Officer representatives meet with Locals to attempt to correct incorrect addresses, a Local Union is not required to independently verify its mailing addresses unless given information about address changes. The Election Officer in his investigation contacted many Guamanian members of Local 2707. No evidence was found that notice of change of address had been given to but then ignored by the Local. Absent such proof, there is no basis for finding a violation of the *Rules*. The Local appropriately mailed the notice of the nominations meeting. That all members may not have received such notice is unfortunate, but -- absent evidence of error in the mailing process or failure or refusal to update mailing addresses -- is not a violation of the *Rules*.

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For all of these reasons, the protest is **DENIED**.

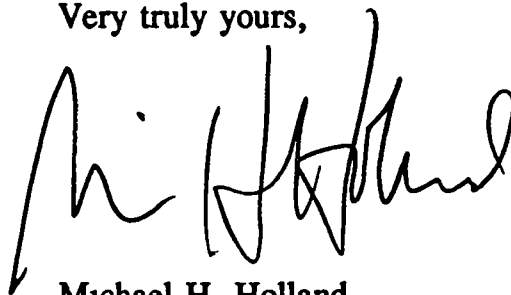
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If any interested party is not satisfied with this determination, they may request a hearing before the Independent Administrator within twenty-four (24) hours of their receipt of this letter. The parties are reminded that, absent extraordinary circumstances, 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

Larry Holden  
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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,

A handwritten signature in black ink, appearing to read "Michael H. Holland". The signature is fluid and cursive, with the first name "Michael" being more prominent than the last name "Holland".

Michael H Holland

MHH/mjv

cc: Frederick B Lacey, Independent Administrator  
Geraldine L Leshin, Regional Coordinator

OFFICE OF THE ELECTION OFFICER  
% INT...NATIONAL BROTHERHOOD OF TEA STERS  
25 Louisiana Avenue, NW  
Washington, DC 20001

Michael H Holland  
Election Officer

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May 8, 1991

**VIA UPS OVERNIGHT**

Francis McSweeney  
c/o The New Eagles for  
Ron Carey Slate  
103 Sun Shine Circle  
Plainfield, IL 60544

Thomas H Geoghegan  
77 West Washington St.  
Chicago, IL 60602-2985

Harry H. Hughes  
15430 Warwick Dr  
Oak Forest, IL 60452

Lisa Hopper  
805 N. Utah  
Davenport, Iowa 52804

William Joyce  
Secretary-Treasurer  
IBT Local Union 710  
c/o The Wm. "Bill" Joyce Slate  
4217 S. Halsted St.  
Chicago, IL 60609

Donovan Bauldry  
8800 S Harlem Ave.  
Apt. 811  
Bridgeview, IL 60455

Philip J. Wardell  
1354 E. Losey  
Galesburg, IL 61401

Robert McGinnis  
6319 S Lavergne  
Chicago, IL 60638

Re: Election Office Case No. Post-41-LU710-CHI  
P-586-LU710-CHI

Gentlemen

Post-election protests were filed by members of the New Eagles for Ron Carey Slate immediately after the March 2, 1991 counting of ballots in the election for delegates and alternates at Local 710. These members assert that they, their slate and the membership of Local 710 were deprived of a fair and democratic election pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*"). Specifically, post-election protests were filed by Philip J. Wardell and Lisa C Hopper on March 4, 1991, by Donovan Bauldry on March 4, 1991, by Harry H Hughes on March 4, 1991, and by Robert McGinnis on March 5, 1991. Additionally, a pre-election protest, P-586-LU710-CHI, was filed by Mr. Bauldry on February 26, 1991 in regard to alleged misconduct at a general membership meeting on

February 24, 1991, which was also the subject of the post-election protest. The pre-election protest in Election Case No. P-586-LU710-CHI was deferred by the Election Officer on March 15, 1991.

The nominations meeting for the selection of 15 delegates and 15 alternates to represent Local 710 at the International Convention was conducted on January 13, 1991. Ballots were mailed to the membership on February 11, 1991. The ballots were counted on March 2, 1991. A total of 5,003 ballots were cast. There were 359 ballots challenged (which challenges were not resolved since the challenged ballots did not make a difference to the outcome of the election) and 60 void ballots. The results of the election were as follows.

NEW EAGLES FOR RON CAREY  
For Delegate

Frank McSweeney	1945
Philip L Lightfoot	1950
Gene Stewart	1934
Wayne R Mazurkiewicz	1921
Philip J. Wardell	1912
Harry H. Hughes	1933
Timothy M Casey	1926
Lisa C. Hopper	1957
Albert R. Brown	1906
Michael J. Kucia	1915
Bob Golubovic	1900
Dan Tuffs	1902
Harry P. Bidwell	1917
Fred Kautsky	1891
Kenneth E Jacobson	1911

For Alternate Delegate

William J O'Brien	1948
J B Masingale	1897
Donald A Dixon	1919
Clifton H Sebree	1889
William E Woelfel	1891
Jack L Johnson	1910
Steven W Byrum	1904
Don Bauldry	1889
Daniel M Dresky	1905
Kenneth M Beschorner	1885
John P Kaale	1884
Gary Boelkes	1882
Kenneth Poznak	1887

WM. "BILL" JOYCE SLATE  
For Delegate

Wm. "Bill" Joyce	2605
John D Kelahan	2535
Frank J. Wsol	2566
Hugh "Corky" Corcoran	2578
William "Bill" Krakowski	2559
George Leicht	2542
John "Jack" Ormond	2557
Samuel J Bongiovanni	2529
James E. Dawes	2564
Martin "Marty" DeWan	2558
Robert N. Falco, Sr.	2573
Patrick W. Flynn	2602
James M Ramirez	2559
Annette Robinson	2571
Gene Wade	2579

For Alternate Delegate

Ronald C Berres	2478
Dave Flemming	2501
Jim Eastwood	2515
John Goberville	2477
Jim Harding	2509
Patrick Keenan	2495
James Lucinski	2477
Mike McFadden	2516
Bill Messina	2480
Tony Munoz	2500
Pete Radovanovic	2476
Kenny Strothman	2476
William "Bill" Sweeney	2529



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James Sestak	1869	Patricia Witt	2537
Sherrie L. Neuendorf	1929	Richard Wright	2489

Thus, the margin between the delegate candidate elected who received the lowest number of votes, Samuel J. Bongiovanni (2529 votes), and the highest ranking losing delegate candidate, Lisa C. Hopper (1987 votes), was ~~572 votes~~.

The primary issue raised by the challengers in their protests was that representatives of the Wm. "Bill" Joyce Slate, headed by incumbent Secretary-Treasurer William "Bill" Joyce, improperly coerced and defrauded the membership in regard to the election by indicating to Local 710 members employed by UPS facilities outside the Chicago area that if they voted for the opposition slate they would be transferred out of Local 710 and would consequently lose certain pension benefits. The protesters assert that these alleged statements not only constituted coercion but also discouraged UPS members outside the Chicago area from voting. Additionally, the protesters claim that the observers for the Joyce Slate recorded, during the counting process, the names of members who had voted and that this information would give them improper advantage in future elections. (Additionally, they claim that the use of the Local Union's attorney, Marvin Gittler, to attend the ballot and to participate in protest proceedings involving members of the Joyce Slate, constitute improper expenditures of Union funds.)

The issue of the potential transfer of Local 710 members working at UPS to the 14 Locals in Southern Illinois, Iowa and Indiana within whose geographic jurisdiction these members work was a major campaign issue throughout the delegate election. This matter had been an issue of very long standing in the Local. It is undisputed by all concerned that there was considerable discussion by candidates and their supporters, as well as the membership, about the implications of any possible transfer of members out of Local 710. Both slates vigorously opposed the transfer of Local 710 members to the jurisdiction of the 14 other Locals. There was, however, controversy between the slates as to which slate of candidates could more effectively battle against any such transfer.

On February 7, 1991, the General Executive Board of the International Union rendered a decision indicating that UPS members working within the geographic jurisdiction of the other 14 Locals should be transferred to those Locals. The decision specifically required the pension benefit rates of members of Local 710 be protected despite any transfer. The date of the transfer was not specified, the General Executive Board decision indicated that the transfer would occur after an agreement had been reached concerning the pension issue.

Concerns about the implications for the delegate and alternate election of the transfer of such UPS members out of Local 710 gave rise to the filing of a number of pre-election protests. These protests were resolved collectively in a decision of the Election Officer. See Election Office Case Nos P-529-LU710-CHI, P-542-LU710-CHI, P-547-LU710-CHI, P-548-LU710-CHI, P-570-LU710-CHI and P-595-LU710-CHI. The Election Officer held that any transfer of membership from Local 710 would not affect the rights of UPS members who had historically been members of Local 710.

to run for delegate and alternate positions be credentialed as delegates and alternates and vote in the delegate and alternate election at Local 710 While an appeal of this decision was filed by some of the original protestors in those cases this appeal went to the specific remedies ordered by the Election Officer and ultimately was withdrawn These decisions however did not resolve the question of the allegedly improper coercion of members of Local 710 by the Joyce Slate and its supporters in relation to the transfer of the UPS membership out of Local 710

In regard to the specific matters making up the allegation of improper coercion on the part of the incumbent slate the protestors point to a meeting held on February 3 1991 at Collinsville Illinois among UPS members to discuss the recently negotiated collective bargaining agreement with UPS and also contend that allegedly coercive campaigning was engaged in by stewards in downstate Illinois Indiana and Iowa. The protestors specifically assert that Robert Falco Sr threatened that if members of Local 710 voted for Ron Carey and the slate within Local 710 that supported him, UPS members outside of Chicago would be transferred out of Local 710 and members pension rights would thereby be harmed. Additionally it was alleged that Mr Falco a delegate candidate on the Joyce Slate attended the February 3 1991 meeting while being paid by the Local and that he used a car provided by the Local thus constituting an improper expenditure of Union funds

Representatives of the Election Officer conducted an extensive investigation of the allegations of the Carey Slate Those protestors the respondents and their respective counsel were solicited for names of members known to have information relevant to the charges made in the protests Everyone described as having information germane to the protest was contacted. Additionally a number of other members were selected at random from a list of supporters provided to the Elections Officer by one of the protestors and were interviewed with regard to the allegations. Sworn statements were provided by the respondents. In all information was received from over 20 members employed at fifteen of the UPS worksites located in the affected areas

The investigation by representatives of the Election Office confirmed that a meeting was organized by shop stewards in the Collinsville Illinois area on February 3 1991 to discuss the recently negotiated UPS contract. The meeting was attended by approximately 40 50 members and lasted for approximately two hours. There was considerable discussion of many aspects of the proposed UPS contract. At the very end of the meeting if not after its official adjournment a member inquired whether the possible transfer of Local 710 members could affect their pension rights. Mr Falco responded that their pension rights would not be prejudiced but went on to add that the only way to solve any involuntary transfer of Local 710 members would be to send an experienced delegation to the Convention who would know how to change the Constitution in a way favorable to the views of Local 710 s members who preferred to remain within Local 710. Mr Falco supported by steward Mike Valenti claims that he also indicated that he did not care whether Mr Carey was elected but did believe that the Joyce slate would be more effective in protecting the jurisdiction of Local 710 with regard to the UPS transfers than their opponents. Mr Falco and Mr Valenti

specifically deny that any threats were made to coerce members to support the Joyce Slate.

The Election Officer finds that the discussion of the potential transfer of Local 710 members in this instance does not constitute improper coercion of the membership of Local 710. This issue was a hotly debated issue within the Local, an issue about which there was naturally concern during the delegate and alternate election. Mr. Falco's statement came at the end, or after the adjournment, of the formal meeting about the then-recently negotiated UPS contract. It was in response to an inquiry of a member. Even if it took place on work time in an official meeting prior to its adjournment, the statement was incidental to Mr. Falco's work as a business agent. Such statements incidental to work are not improper within the Election Rules. Article VIII, § 10 (b) Finally, with regard to the use of the automobile, Mr. Falco has stated, without contradiction, that he on this occasion used his own personal vehicle because he intended to visit his daughter in Springfield, Illinois after the meeting. Consequently, the conduct at the meeting of February 3, 1991 at Collinsville does not constitute a violation of the Election Rules.

The protesters also contend that improper threats concerning the transfer of Local 710 members were made by stewards Kent Bradley and Jim Eastwood. Mr. Bradley acknowledged that he did discuss the controversial issue of the transfers with members on non-work time. He specifically denied making any threats concerning what would happen to members with respect to the transfer if they voted for Mr. Carey or the New Eagles Slate. Likewise, he denied threatening the loss of any pension benefits, which he said that he believed were protected by law. He said that he indicated to the membership that Mr. Joyce and the other incumbents did not want to lose over 3,000 members from the Local. He also told Local 710 members to whom he talked, that he had attended a meeting the previous year in Decatur attended by Ron Carey and did not believe that Mr. Carey adequately answered the question that he posed concerning the potential transfer of Local 710 members. Finally, he confirmed that he did indicate to members that he thought that the Joyce Slate members were in a better position based upon their experience to deal with this issue, including a possible constitutional change, at the June, 1991 Convention

Mr. Eastwood likewise denied making any threats and indicated that he felt that the Joyce Slate members could more effectively serve the interests of the Local with regard to the transfer issue at the Convention. None of the members interviewed attending any meetings with Mr. Bradley or Mr. Eastwood, or having individual contact with them, have indicated that improper threats were, in fact, made. It appears that there was vigorous discussion of the transfer issue and this clearly implicated the delegate and alternate election, but improper coercion has not been established.

The members and supporters of the Joyce Slate respond further that campaign literature by the New Eagles Slate specifically debated the issue of which group could best deal with the proposed transfer of Local 710 members, and that their own statements concerning the greater experience of the Joyce Slate in potentially dealing

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with this issue at the Convention were factually accurate. They further point out that the transfer issue predated this election campaign since the issue of the retention of the UPS members outside of Chicago has been in dispute with the other Locals for a number of years.

The Election Officer has repeatedly stated that he will not regulate the content of campaign literature or campaign statements. The fact that assertions in campaign literature or statements are allegedly false or even defamatory does not mean that they violate the Election Rules. See National Association of Letter Carriers v. Austin, 418 U.S. 264 (1974) (uninhibited and robust debate encouraged in labor matters, even allegedly defamatory statements permitted); Salzhandler v. Caputo, 316 F.2d 445 (2nd Cir. 1963) (statements critical of Union officials, even if incorrect, are protected). The policy of encouraging uninhibited and robust debate in the selection of delegates is reflected in Article VIII, § 6 (g) of the Rules, which prohibits the censorship of campaign literature. This policy likewise applies to verbal statements. Thus, the discussion, either orally or in campaign literature, of which slate could more properly represent the interests of Local 710 members in fighting the involuntary transfer of UPS members outside Chicago to other Locals at the upcoming International Convention was a proper one for discussion. A broad range of debate is not to be prohibited, but encouraged.

Further, there is no factual support for the contentions of the protestors that the campaign statements discouraged members of Local 710 from voting in the delegate and alternate delegate election. Approximately, forty-three percent of the members eligible to vote from Local 710 participated in this election. This is about 16% more than the number who participated in the 1988 Local Union officer elections and about 13% more than the number who participated in the Local Union officer elections in 1985.

While the average number of eligible voters employed at UPS participating in the process was somewhat lower than the participation for the Local as a whole, 37% of the eligible members employed by UPS did, in fact, participate in the election process. Again, this must be compared to the approximately 27% participation in the 1988 Local Union officer election and the approximately 30% participation in the 1985 Local Union officer election.

Thirty-six percent of the eligible members employed by UPS outside the Chicago metropolitan area, the members potentially affected by the International's transfer decision, participated in the delegate and alternate delegate election process. This is equivalent to the participation, 35.9%, of all eligible Local 710 members residing outside of the metropolitan Chicago area. Thus the statements made by members and supporters of the Joyce Slate, in addition to not being violative of the Rules, did not "discourage" Local 710 members employed by UPS outside the Chicago area from voting.

Accordingly, the post-election protest relating to the alleged statements of Joyce

Slate supporters concerning the transfer of UPS members from Local 710 is DENIED.<sup>1</sup>

With regard to the allegation that the member of and observers for the Joyce Slate recorded the names of members who had cast votes during the counting of ballots on March 2, 1991, all observers and candidates had the opportunity to participate in observing the count. This opportunity included, subsequent to a direct telephone conversation between the Regional Coordinator and the Election Officer, the opportunity to make a list of members who had cast votes as those ballots were being processed. This opportunity was made available to all parties; representatives of the Election Officer specifically made arrangements for the protestors, if they desired to do so, to review a copy of the voter eligibility list for the purpose of identifying voting members. Thus, the Election Officer finds no improper conduct occurred because certain candidates or observers recorded the names of voting members at the election count. Accordingly, this aspect of the election protest is DENIED.

It was also alleged that the incumbent officers used the services of Marvin Gittler, the Local's legal counsel, at the expense of the Local.<sup>2</sup> Mr. Gittler was in fact paid by Local Union funds. Mr. Gittler and the Local Union officers assert that this expenditure of Union funds was proper.

A Local Union, as an institution, has an interest in assuring that the delegate and alternate election is conducted properly. Such institutional interest can include having an attorney at the count. Thus, utilization of Local 710 resources to have Mr. Gittler at the count does not, in and of itself, constitute a violation of the *Rules*. The Election Officer investigation found that Mr. Gittler did not do anything at the count to advance the candidacy of any candidate or slate. Therefore, it did not violate the *Rules* for Local 710 to pay for his services with respect to the count.

A different conclusion is reached by the Election Officer with respect to these post-election protests. It is clear, from a review of the position statements filed by Mr. Gittler, that they are in defense of the interests of certain candidates and not of the Local Union's independent or institutional interests. This does constitute a violation of the *Rules*, since Mr. Gittler's representation was in the interest of a particular candidate or slate of candidates.

That this action constitutes an improper expenditure by the Local Union, does not mean that the election results will necessarily be overturned. 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." For a violation to

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<sup>1</sup>Since the Election Officer denies this aspect of the protest on its merits, it is not necessary to reach a decision with regard to the issue of untimeliness.

<sup>2</sup>To the degree that this protest asserts improper expenditures for legal services prior to the ballot count and this post-election protest, it is untimely, *Rules*, Article XI, § 1, and is therefore DENIED.

have affected the results of the election, there must be a meaningful relationship between the violation and the results of the election. See Wirtz v. Local Unions 410, 410(A), 410(B) & 410(C), International Union of Operating Engineers, 366 F 2d 438 (2nd Cir 1966), Dole v. Mailhandlers, Local 317, 132 LRRM 2299 (D C Alabama 1989). The expenditure of Local Union funds for Mr Gittler to defend this post-election protest could not have affected the outcome of the election. Firstly, there was a 572 vote margin in this election. Secondly, all of the expenditures of funds took place after the ballots were counted after the election was over, and thus could not have affected the results of the election. There simply is no nexus between these expenditures and the outcome of the election.

A pre-election protest was filed by Donovan Bauldry on February 26, 1991 in Election Office Case No P 586 LU710 CHI, which was deferred on March 15, 1991 for post-election resolution by Election Officer Michael Holland. Mr Bauldry alleged that during a general membership meeting on February 24, 1991 members who favored the Joyce Slate were permitted to speak but that a member favoring the New Eagles for Ron Carey Slate was prohibited from responding.

An investigation of this allegation was conducted by representatives of the Election Officer. They found that during the "New Business" portion of the February 24, 1991 regular membership meeting three members briefly addressed the meeting with statements favorable of Mr Joyce and his slate such as statements that "He [Bill Joyce] got me my job". Members of the New Eagles Slate did participate in the meeting and spoke about issues relating to the Local, taking positions against those of the Joyce group. When Dan Tuffs, a member of the New Eagles Slate, attempted to speak in response to the statements favorable to Mr Joyce, there was a short delay before the microphone at which Mr. Tuffs was speaking was turned on. The microphone used by the prior speaker had to be turned off before Mr Tuffs' microphone could be turned on. When the microphone came on Mr Tuffs began to respond but was cut off by the chair, President John Kellahan, who indicated that no campaign speeches would be permitted.

Article VIII, § 4 (a)(1) provides

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<sup>3</sup>Utilization of Union funds for the benefit of particular candidates is, however, a serious violation of the *Rules*. While the Election Officer will not order a new election, since such post-election conduct could not have affected the results of the election, a remedy for this violation is nonetheless appropriate. Thus to the extent that the Local Union has paid for Mr Gittler's services in regard to a defense of the interests of the Joyce Slate with respect to these post-election protests the members of this slate are ordered to reimburse the Local Union for the legal services of Mr Gittler. A representative of the Joyce Slate is required to file an affidavit with the Election Office, together with supporting documents, within five days of this decision indicating that the Local Union has been reimbursed for these services.

Francis McSweeney  
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No candidate may be denied access to any meeting of the Local Union to which he/she belongs as a member; however, the Local need not grant such candidate the opportunity to address the meeting for the purpose of campaigning unless a similar opportunity is granted to other candidates.

The policy of Local 710 was not to permit campaign speeches by candidates at Local meetings. Mr. Tuffs was a candidate for delegate; the three people speaking favorably about Mr. Joyce were not candidates. While the statements made by these three members were not explicit endorsements of the Joyce Slate, they were comments favorable to the actions of Mr Joyce. However, in the context of the overall meeting, wherein numerous issues were discussed, these three short comments constituted a relatively small component of the meeting. The Election Officer does not find that the delay concerning the switching of the microphone was intentional in view of the newness of the audio system and its use at this meeting.

Additionally, this brief exchange at a single general membership meeting in the context of a hotly contested election in which both slates campaigned actively cannot reasonably be said to have substantially affected the outcome of virtually any votes, let alone 572 votes. The Election Officer therefore finds that the actions at the February 24, 1991 meeting could not have affected the outcome of the election.

Accordingly, the *Rules* violations with respect to Mr. Gittler's legal fees and the conduct of the February 24, 1991 meeting having been found not to have affected the outcome of the election and the other aspects of the post-election protests having been found not to be violations, the entire post-election and deferred pre-election protests of the challengers are 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

Francis McSweeney  
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MHH/pjm

cc: Frederick B Lacey, Independent Administrator  
Julie E Hamos, Regional Coordinator



IN RE:

ROBERT MCGINNIS,  
DONOVAN BAULDRY, et al.,

and

WILLIAM JOYCE

and

IBT LOCAL UNION NO. 710

91 - Elec. App. - 150 (SA)

DECISION OF THE  
INDEPENDENT  
ADMINISTRATOR

This matter arises out of an appeal from a decision of the Election Officer in Case Nos. [REDACTED] and P-586-LU710-CHI. A hearing was held before me by way of telephone conference on May 15, 1991, at which the following persons were heard: Robert McGinnis, Donovan Bauldry, Harry Hughes, and Lisa Hopper, four of the complainants; Martin DeWan, a Business Agent from Local 710 speaking on behalf of the William "Bill" Joyce slate; Dennis Sarsany, the Adjunct Regional Coordinator; and John J. Sullivan and Barbara Hillman, on behalf of the Election Officer.

The Election Officer consolidated a pre-election protest with several post-election protests for post-election consideration. Pursuant to Article XI, Section 1.b.(2) of the Rules For The IBT International Union Delegate And Officer Election (the "Election Rules"):

Post-election protests shall only be considered and remedied if the alleged violation may have affected the outcome of the election.

## LOCAL 710'S ELECTION

Local 710 elected 15 delegates and 15 alternate delegates to attend the 1991 IBT International Convention. Two full slates appeared on the ballot. The first slate was headed by William "Bill" Joyce, the incumbent Secretary-Treasurer of the Local. The second slate was named the "New Eagles For Ron Carey Slate." The Joyce slate won all 15 delegates positions and all 15 alternate delegates positions. As explained by the Election Officer in his Summary:

The margin of victory between the elected delegate candidate with the lowest number of votes (Samuel J. Bongiovanni with 2,529 votes) and the losing delegate candidate with the most votes (Lisa C. Hopper with 1987 votes) was 572 votes. The margin of victory between the elected alternate delegate with the lowest number of votes (Pete Radovanovic with 2,476 votes) and the losing alternate delegate candidate with the most votes (William O'Brien with 1,948 votes) was 528 votes.

## THE JURISDICTIONAL ISSUE

During the campaigning between the two slates, the Joyce slate focused in on a jurisdictional issue impacting Local 710. As explained by the Election Officer in his Summary:

A substantial number of members of Local Union No. 710 work for United Parcel Service in various locations in Illinois, Indiana and Iowa. Historically, the UPS employees belonged to Local 710 despite the location of their worksites within the geographic area of other Locals. A jurisdictional dispute developed between and among Local 710 and 14 other Local Unions with geographical jurisdiction over the sites in which the members employed by UPS worked. That dispute was resolved on February 7, 1990, when the General Executive Board of the IBT issued a ruling that the members should be transferred out of Local 710 and into the appropriate

Local Union servicing the geographic area in which the members are working.

However, the transfers ordered by the GEB were not given an effective date; instead, representatives of the affected Local Unions were directed to make arrangements to implement the transfer. In addition, the GEB specified that the Local Unions were to ensure that no member suffered any loss of pension rights or benefits as a result of the transfer. The GEB ordered a report on the protection of pension rights to be submitted on February 28, 1991.

The protestors claimed that the results of the election were affected by the Joyce slate making threats to Local 710 members employed in UPS facilities outside the Chicago area that if they voted for the New Eagles For Ron Carey Slate, they would be transferred out of Local 710 and would consequently lose certain pension benefits. The protestors claimed that these threats not only constituted impermissible coercion, but also discouraged UPS members outside the Chicago area from voting in the election at all.

The protestors have mischaracterized the statements made by the members of the Joyce slate. While the Joyce slate members may have said words to the effect that: "If you vote for the New Eagle slate, you will be transferred out of Local 710 and lose your pension benefits," those words were not meant or intended to be threatening, but were rather meant to imply that the members of the New Eagle slate were not experienced enough to successfully negotiate the jurisdictional issue. Stated another way, if the Joyce slate were elected, they would be able to take the necessary and appropriate action to preserve Local 710's jurisdiction. Any

other interpretation of these campaign statements is unreasonable and the argument that such statements were meant as threats to coerce votes borders on the frivolous.

The suggestion that these statements discouraged Local 710 members from voting is also completely lacking in merit. An analysis performed by the Election Officer regarding the percentage of members who voted in this election as compared to the percentage of members who voted in previous Local Union elections simply does not support the protestors' allegations. Moreover, given that the statements were not threatening in nature, as the protestors alleged, it simply does not follow that members would have failed to vote because of the statements.

Accordingly, the Election Officer's denial of this aspect of the protest is affirmed.

#### **THE COLLINSVILLE, ILLINOIS MEETING**

The protestors also alleged that on February 3, 1991, Local 710 shop stewards, and supporters of the Joyce slate, called a "Union meeting" to purportedly discuss the recently-negotiated collective bargaining agreement with United Parcel Service. The protestors alleged that the meeting was, in effect, a political rally for the Joyce slate and, thus, the Local impermissibly donated to the Joyce slate by paying for the stewards' time, the hotel bill for the room in which the meeting took place, and the transportation of the stewards to the meeting. See Election Rules,

Article VIII, Section 10.b. Moreover, the protestors alleged that the meeting was improperly called and thus, the members of the Local did not have proper notice.

First, the Election Officer's investigation found that the meeting was not a membership meeting, but was rather a "craft" meeting. Thus, the Local 710 By-law provisions regarding adequate notice of membership meetings need not have been complied with. Moreover, while there may have been some comment at the meeting regarding the jurisdictional issue, any such comment was in response to specific questions and was incidental to the true purpose of the meeting -- the discussion of the collective bargaining agreement. As such, such comments do not violate the proscription of Article VIII, Section 10.b. of the Election Rules.

Accordingly, the Election Officer's conclusion that the Election Rules were not violated at the Collinsville meeting is affirmed.

#### FEBRUARY 24, 1991, UNION MEETING

It is also alleged that at a February 24, 1991, general membership meeting, members supporting the Joyce slate were permitted to speak while a candidate on the New Eagles For Ron Carey Slate was not permitted to speak. This allegation implicates Article VIII, Section 4.a.(1) of the Election Rules which provides that:

No candidate may be denied access to any meeting of the Local Union to which he/she belongs as a member; however, the Local need not grant such candidate the opportunity to address the meeting for the purpose of campaigning unless a similar opportunity is granted to other candidates.

The Election Officer's investigation found no merit to this protest. Although there were three members who spoke at the meeting and briefly made statements in support of the Joyce slate, the Joyce slate clearly did not use the meeting as a platform to advance its campaign.<sup>1</sup>

When the New Eagles For Ron Carey Slate member, Dan Tuffs, attempted to speak, there was an initial problem with his microphone. The Election Officer's investigation revealed that the creation of this problem was not intentional and after a short interruption, Mr. Tuffs' microphone was made operable. When Mr. Tuffs began to speak, he apparently attempted to make some explicit campaign statements on behalf of his Slate. He was interrupted by the President of the Local who was chairing the meeting. The President indicated that he would not allow campaign speeches.

The question of whether or not the Election Rules were violated when Mr. Tuffs was interrupted need not be reached. As noted, this election was won by over 500 votes. The election was hotly contested. The three brief comments made in support of Mr. Joyce at the general membership meeting on February 24, 1991, cannot reasonably be believed to have swayed the election. Given

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<sup>1</sup> The three members who spoke were not candidates.

it cannot be said that the alleged violation "may have affected the election." Thus, the alleged violation need not be addressed.

Accordingly, the Election Officer's denial of this aspect of the protest is also affirmed.

#### OBSERVING THE BALLOT COUNT

The protestors also alleged that during the counting of the ballots on March 2, 1991, observers for the Joyce slate were permitted to record the names of the members who had cast votes, but that members for the New Eagles Slate were not permitted to do so. The Election Officer's investigation revealed that after some initial confusion at the counting of the ballots, the representative from the New Eagles For Ron Carey Slate was informed that he could, in fact, observe and record the names of the members who had cast votes. Moreover, the representative of the New Eagles Slate was told that he would even have access to the election day roster prepared by the Election Officer. The New Eagles Slate did not avail itself to that opportunity. The Joyce Slate, however, did avail itself of the opportunity and did record the names of those who voted.

Accordingly, there can be no violation of the election rules based upon the failure of the New Eagles Slate to exercise a specific right given to them by the Election Officer consistent with the Election Rules. See Article IX ("Observers") of the Election Rules.

with the Election Rules. See Article IX ("Observers") of the Election Rules.

At the hearing, Mr. McGinnis complained that he was not informed of the opportunity to inspect the Election Day roster. Mr. McGinnis, however, was not a candidate for either a delegate or alternate delegate position. Thus, he was not entitled to the observer rights pursuant to Article IX of the Election Rules.

Accordingly, the Election Officer's denial of this protest is also affirmed.

#### THE LOCAL'S ATTORNEY

Lastly, the protestors alleged that the officers of Local 710 improperly used the services of Martin Gittler, an attorney whose fees are paid by Local 710, to be present at the counting of the ballots on March 2, 1991. It is also alleged that Local 710 improperly paid for Mr. Gittler's services when he submitted responses to the post-election protests filed by the protestors.

As explained by the Election Officer in his Summary:

As to the Local's retention of an attorney to monitor the counting of the ballots, the Election Officer finds no violation. The Local Union has an institutional interest in assuring the integrity of the election process affecting the Local. That interest may be served permissibly by retaining an attorney to represent the Local at the counting of the ballots.

Thus, expenditure of the funds of Local 710 to have Mr. Gittler observe the ballot count does not, in and of itself, constitute a violation of the Election Rules. Nor did the Election Officer's investigation disclose any partisan conduct or advocacy by Mr. Gittler at that time.



Accordingly, the Election Officer found that the Local did not violate the Election Rules by retaining Mr. Gittler's services with respect to the ballot count.

However, Mr. Gittler's participation in the post-election protest was not similarly in the service of the Local Union as an institution. A review of the submissions filed by Mr. Gittler demonstrates that he took a clearly partisan position and incontrovertibly engaged in advocacy on behalf of particular candidates. This conduct, it must be concluded, falls within the proscription of the Rules. [Emphasis in original.]

Having found a violation of the Election Rules regarding Mr. Gittler's participation in the post-election protest, the Election Officer was unable to find the required relationship between the expenditure of Local Union funds for Mr. Gittler's defense of the post-election protest and the outcome of the election. In other words, the Election Officer could not find that the violation of the Election Rules "may have affected the outcome of the election." I agree with the Election Officer's conclusion. Mr. Gittler was involved post-election. Thus, it is impossible to find that his involvement had any impact on the election.

Nonetheless, the Election Officer, finding a serious violation of the Election Rules, determined that a remedy was in order. The Election Officer ordered the members of the Joyce Slate to reimburse the Local Union for the legal services rendered by Mr. Gittler in the post-election protest process.

The Election Officer's disposition of this aspect of the protest is proper and is affirmed.

At the hearing before me, Mr. McGinnis raised further allegations that Mr. Gittler had on other occasions contributed his

protest was untimely, but rather argued that the Election Officer, in processing other protests, did not comply with the controlling time frames set forth in the Election Rules. Thus, Mr. McGinnis argued that he should not be penalized for having filed late protests. Mr. McGinnis' arguments are undeserving of consideration. It is understood, that the time limitation set forth in the Election Rules may in the interest of ensuring a free, fair and open election be relaxed where the interests of justice require. Accordingly, where the Election Officer finds that he needs additional time to thoroughly investigate a protest, and his delay is not an unreasonable one, the Election Rules will be relaxed to afford him that time. On the other hand, however, where a protestor, for no good reason except his own dilatory conduct, delays in filing a protest, that protest will be found to be untimely under the Election Rules. To hold otherwise, would be to allow protestors to sit and wait for election results before filing election protests. If the election results are favorable, no protest will be filed. If the election results are unfavorable, as was the case here, then the protestor will come forth. Such action violates the letter and intent of the Election Rules.<sup>2</sup>


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<sup>2</sup> In any event, Article X, Section 1.a.(2) of the Election Rules provides:

The above rules of Paragraph (1) do not prohibit the candidate's use of financial support of services from employers or labor organizations (other than the Union) to pay fees for legal or accounting services performed in assuring compliance with applicable election laws, rules  
(continued...)

## CONCLUSION

For the reasons expressed herein, the Election Officer's treatment of these consolidated protests is affirmed in all respects. The protestors are admonished for having pursued this appeal. Their claims were totally without merit. It is clear that as the delegate election process draws to an end, some unsuccessful candidates are unable to face the harsh reality that they lost their bid for delegate and alternate delegate positions. Instead, they seek to cling to the protest and appeal process set forth in the Election Rules in an attempt to gain a second bite at the apple.



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

Dated: May 16, 1991

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<sup>2</sup> (...continued)

The above rules of Paragraph (1) do not prohibit the candidate's use of financial support of services from employers or labor organizations (other than the Union) to pay fees for legal or accounting services performed in assuring compliance with applicable election laws, rules or other requirements or in securing, defending, or clarifying the legal rights of candidates. Contributions of this kind are permitted only to the extent that they are confined to these permissible objects.