



OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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Election Officer

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April 19, 1991

VIA UPS OVERNIGHT

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c/o The Rank & File Slate
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E Petersburg, PA 17520

Jay W. McKinney
c/o McKinney/Laukhuff Slate
Secretary-Treasurer
IBT Local Union 771
1025 N Duke Street

LeVerne R Gibble
c/o The Gibble/Monahan Slate
127 April Lane
Lititz, PA 17543

Thu-Trung-Lam
401 Park Wynne Rd
Lancaster, PA 17601

Lee Via
421 Mt Gretna Rd
Elizabethtown, PA 17022

Re: Election Office Case No. Post-47-LU771-PHL

Gentlemen

James J Cox, a member and candidate for delegate from Local 771 to the IBT International Convention, filed this post-election protest pursuant to Article X, §1 of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules") Mr Cox alleges in his protest that he had filed a pre-election protest, Election Office Case No P-473-LU771-PHL, in which he sought access to campaign on the premises of 3 large employers of Local 771 members, and that he did not receive the decision in that case, determining that he had the right to such access, until March 7, 1991, the day the ballots were to be counted Mr Cox states that these 3 employers employ 450 IBT members, thus the outcome of the election may have been affected by the violation found in P-473-LU771-PHL

Mr Cox also protests that a newspaper article published in the Lancaster New Era newspaper on March 9, 1991 contained false and misleading information regarding the election results, which information was allegedly supplied by Jay W McKinney, Secretary-Treasurer of Local 771 and/or Kenneth Laudruff, President of Local 771 Mr Cox contends that this conduct exemplifies the contempt of Mr McKinney and Mr

Laukhuff for the *Rules*. Finally, Mr Cox states the election results have been not been posted as required by the *Rules*.

Local 771 was required to elect 4 delegates to the IBT International Convention The election was held exclusively by mail ballot and the ballots were counted on March 7, 1991. The tally of ballots was as follows:

<u>DELEGATE CANDIDATES</u>	<u>NUMBER OF VOTES</u>
Jay W McKinney	802
Kenneth Laukhuff	762
Lesley Foltz	707
Joseph Herr	701
James Cox	501
LaVerne Gible	395
Jerry Monahan	363
Eddie Fairhurst	318
Alvin Mellinger	312
James Miller	294
Thu Lam	181
Lee Via	38

The margin between the fourth ranked delegate candidate Mr Joseph Herr, and the fifth ranked delegate candidate, Mr Cox, was 200 votes Based on the allegations contained in the protest of Mr Cox and the vote margin noted above the Election Officer has investigated the protest in accordance with Article XI of the *Rules*

The investigation of the Election Officer reveals that in his pre-election protest, P-473-LU771-PHL, Mr Cox complained of his lack of access to the premises of 3 employers where Local Union 771 employees worked Those employers were Miller and Hartman, Skyline Distribution, and Crowley Foods As a result of the filing of the protest in P-473-LU771-PHL, Miller and Hartman and Skyline agreed, on or about February 22, 1991, to permit campaigning by IBT members other their than their own employees in their parking lots upon proper notice. Mr. Cox was advised of this a agreement by a representative of the Regional Coordinator shortly thereafter These two employers employ in the aggregate, 320 IBT eligible voters

Crowley Foods employs 195 eligible voting members of Local 771 In a decision dated March 6, 1991 in case P-473-LU771-PHL, the Election Officer determined that Crowley Foods violated the *Rules* by preventing Mr Cox or any other member desiring to campaign, access to the membership employed by Crowley Foods at the access gate to the employer's facility

Article XI, § 1 (b) 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 Thus, a violation of the *Rules* alone is not grounds for setting aside an election unless there is a reasonable probability that the outcome of the election may have been

affected by the violation Wirtz v. Operating Engineers, 366 F 2d 438 (2nd Cir 1966) To determine whether an effect exists the Election Officer determines whether mathematically the effect was sufficient in scope to affect the outcome of the election and/or whether there is a causal connection between the violation and the result or outcome of the election. Dole v. Mail Handlers, Local 317, 132 LRRM 2299 (D C M D. Ala, 1989)

It has already been decided in P-473-LU771-PHL that Mr. Cox's rights under the *Rules* were impeded by the refusal of Crowley Foods to permit him access to their premises for purposes of campaigning. Thus, the issue remaining is whether this violation affected the outcome of the election.

For the reasons that follow, the Election Officer determined that it did not

There were 195 eligible voters employed by Crowley Foods. The vote margin between Mr. Cox and the fourth ranked delegate candidate was 200 votes. Thus the outcome of the election would not have been affected even if all 195 members had voted in the election, and had voted for Mr. Cox.

Mr. Cox alleges however that he was unaware that Skyline or Miller/Hartman would grant him access until March 7, 1991, too late for him to campaign. As noted above, the investigation of the Election Officer established that Mr. Cox was advised of this agreement prior to March 7, 1991. In any event, the Election Officer finds that even assuming Mr. Cox was not aware of the agreement it is not probable that the outcome of the election would have been affected.

Mr. Cox was known to the Local membership including those members employed by Miller and Hartman, Skyline and Crowley Foods. He ran for Local office in a recent Local election. Mr. Cox also completed a mailing of his campaign literature to all members of the Local prior to the delegate mail ballot election. No delegate candidates, including those who were ranked one through four, campaigned at any of the employer locations which were the subject of case P-473-LU771-PHL. Thus, no candidate had an advantage over Mr. Cox in this regard. For these reasons, the Election Officer finds that it is not probable that the violation of the *Rules* by the employers of Local 771 members as set forth in P-473-LU771-PHL affected the outcome of the Local 771 delegate election.

As to the allegedly fallacious newspaper article and the failure to post the vote tally, it is clear that neither the article or the alleged failure to post the tally could have affected the outcome of the election since the conduct complained of occurred after the election. Further, the Election Officer finds the *Rules* have not been violated.

Mr. Cox's complaint about the newspaper article is that he was credited in that article with less votes than the number he actually received. The number printed was the number of votes he received from voters who split their ballot, the number of votes he received from voters who cast slate votes for his slate was in the total published by

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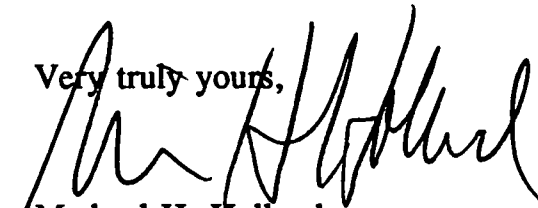
the newspaper. The Election Officer investigation found that the Local Officer gave the total votes credited to each candidate to the newspaper reporter including total votes, slate votes and split votes. The newspaper erroneously printed only the split vote received by Mr Cox. There is no evidence that the Local or its officers was responsible for the error.

Finally, the *Rules* require that the affirmed tally be posted no later than seven days after the vote count. *Rules*, Article XII §6(b). Local 771 forwarded the tally to all stewards for posting on March 11, 1991, four days after the count. Thus, the Local did not violate the *Rules* regarding posting.

For the above reasons, the protest is DENIED.

If any interested party is not satisfied with this determination, they may request a hearing before the Independent Administrator within twenty-four (24) hours of their receipt of this letter. The parties are reminded that, absent extraordinary circumstances, no party may rely upon evidence that was not presented to the Office of the Election Officer in any such appeal. Requests for a hearing shall be made in writing, and shall be served on Independent Administrator Frederick B Lacey at LeBoeuf, Lamb, Leiby & MacRae, One Gateway Center, Newark, New Jersey 07102-5311, Facsimile (201) 622-6693. Copies of the request for hearing must be served on the parties listed above, as well as upon the Election Officer, IBT, 25 Louisiana Avenue, N W, Washington, D C 20001, Facsimile (202) 624-8792. A copy of the protest must accompany the request for a hearing.

Very truly yours,



Michael H Holland

MHH/pjm

cc Frederick B Lacey, Independent Administrator
Peter V Marks, Sr, Regional Coordinator