



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

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April 16, 1991

VIA UPS OVERNIGHT

R F Wojciechowski
5 Locust Court
Old Bridge, NJ 08857

Ronald Prunesti
President
IBT Local Union 102
25 Evergreen Place
East Orange, NJ 07019

Ben Merker
Claridge House #611
Verona, NJ 07044

Re: Election Office Case No. Post-51-LU102-NJE

Gentlemen

Complainant, Richard Wojciechowski, filed this post-election protest pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") Complainant, a candidate for delegate from Local 102, raised two issues in his post-election protest The first issue concerns the alleged failure of the Local to comply with the directive in Election Office Case No P-509-LU102-NJE requiring it to post a notice from the Election Officer on all Local 102 bulletin boards at Anheuser-Busch The second issue concerns the mailing of his campaign literature by Local 102

Local 102 conducted its election by mail ballot The total number of Local 102 members at the time of the election was 1,759. 622 ballots were cast, there were 64 challenged ballots and 10 void ballots. Ronald Prunesti received 403 votes, Ben Merker 338 and Richard Wojciechowski 303 Local 102 was entitled to elect 2 delegates 35 votes separated Mr Wojciechowski from Mr Merker

This protest is a post-election protest Therefore, pursuant to Article XI, § 1 (d)(2), it is necessary that there both be a violation of the *Rules* and a finding that the violation may have affected the outcome of the election. In order to find that the violation may have affected the outcome of the election, there must be a causal connection between the violation and the outcome of the election Dole v. Mailhandlers, Local 317, 132 LRRM 2299 (M D ALA 1989). See also Wirtz v. Local Unions 410, 410A, 410B & 410C, International Union of Operating Engineers, 366 F 2d 438 (2nd Cir 1966) (must be a reasonable probability that the election may have been affected by the violation) For the reasons set forth below, the Election Officer finds both that the

Rules were not violated here and, even if Mr Wojciechowski's allegations constituted violations of the *Rules*, such violations did not affect the outcome of the election.

In Election Office Case No P-509-LU102-NJE, Mr. Wojciechowski protested that he was being denied the ability to post his campaign literature on the Local Union's bulletin boards at the Anheuser-Busch Brewery located in Newark, New Jersey where he worked. The investigation in that case revealed that the bulletin boards had been used previously for the posting of campaign materials for steward elections; the Election Officer also found that bulletin boards of other Locals representing members employed at the plant, had also been used to post Local Union election campaign literature. Thus, the Election Officer on March 6, 1991 ordered that Mr. Wojciechowski be allowed to place his campaign literature on the Union bulletin boards. The Election Officer ordered the Local to post a "Notice to Teamsters Members from Michael H. Holland, Election Officer, IBT" on the bulletin boards to inform all members of their right to use Local 102 bulletin boards for posting of campaign materials.

Complainant now asserts that the Notice was not posted. The Election Officer investigation discloses, however, that the notices were in fact properly posted on all Local Union bulletin boards at Anheuser-Busch as directed by the Election Officer in Election Officer Case No P-509-LU102-NJE.

Further, and assuming that Local 102 had failed to properly post the notice, there is no reasonable probability that the election may have been affected by such failure. The purpose of the notice was to insure that all members of Local 102 employed at Anheuser-Busch were aware of their right to use the Local Union bulletin board for the posting of campaign literature. Mr Wojciechowski, having received a copy of the Election Officer's decision, was clearly aware of his right to so post; the posting of the notice by the Local Union was for him thus irrelevant. Mr Wojciechowski does not allege that he was unable to post his campaign literature on the Local Union bulletin boards after the Election Officer's decision. There is no allegation, and the Election Officer investigation uncovered no evidence, that Mr. Wojciechowski was treated differently than other candidates with respect to his ability to utilize the Local Union bulletin board at Anheuser-Busch for campaign postings. Thus, there is no nexus between the alleged violation -- the failure to post the notice -- and the outcome of the election.¹

The second portion of Mr Wojciechowski's post-election protest concerns the mailing of his campaign literature by the Local Union. He alleges that the Local failed to inform him of the total number of members belonging to Local 102 and thus he did not prepare sufficient copies of his campaign literature. As a result, some members of Local 102 did not receive his campaign mailing. Mr Wojciechowski also protests that

¹Mr Wojciechowski does not allege that he was denied access to Local 102 members employed by Anheuser-Busch for campaigning. Since Mr Wojciechowski worked at the Anheuser-Busch facility and mailed his campaign literature to members employed there, he in fact had access

the physical tasks associated with the mailing were performed by Peter Merker, Recording Secretary for Local 102 and the son of Local 102 Secretary-Treasurer Ben Merker, who was a candidate for delegate opposing Mr Wojciechowski.

The Election Officer investigation determined that Mr Wojciechowski's campaign literature was mailed on February 22, 1991. His literature was mailed by the Local Union pursuant to his request and in accordance with Article VIII, § 6 of the *Rules*. Mr. Wojciechowski was informed by the Local Union that he could observe the process and inspect the literature after the labels were affixed before the literature was mailed. Mr Wojciechowski did so inspect his campaign literature and was present when it was transmitted to the Post Office for mailing.

At the time Mr Wojciechowski asked Local 102 to mail his campaign literature, he requested that he be informed of the number of members in the Local so that he could prepare sufficient copies of his literature for mailing. He was given a number which was less than the actual total membership of Local 102.

When Recording Secretary Pete Merker was in the process of labelling Mr. Wojciechowski's campaign literature, he became aware that Mr. Wojciechowski had not provided a sufficient number of copies of his literature. He informed Mr Wojciechowski of that fact, telling him that he had provided 88 too few copies of his campaign literature. Mr Merker told Mr. Wojciechowski that there were 88 mailing labels which remained after all copies of the literature provided by Mr Wojciechowski had been labelled. The Election Officer investigation determined that there were in fact only 83 "leftover" labels.

Mr Wojciechowski did not supply additional copies of his campaign literature and the literature, when mailed, was not mailed to all members. Mr Wojciechowski signed a written document on February 22, 1991 acknowledging that he was aware that 88 members of Local 102 would not be receiving his campaign literature.

Mr Wojciechowski has offered no reason for failing to obtain additional copies of his campaign literature. The Election Officer investigation determined that the literature had been produced by a photocopy center. The photocopy center had required only one day to produce the number of copies originally requested by Mr Wojciechowski, a number far in excess of the 88 or 83 copies that would have had to be produced to complete Mr. Wojciechowski's mailing.

The Election Officer investigation revealed that Mr Wojciechowski's campaign literature was mailed to all but 83 of the members of Local 102. The Election Officer investigation further revealed that 75 of these members were ineligible to vote.

The Election Officer concludes that Local 102 did not violate the *Rules* with respect to its mailing of Mr. Wojciechowski's campaign literature. The *Rules* require that the Local Union, at the request and expense of any candidate, mail such candidate's campaign literature. Local 102 did so here. That the Recording Secretary of the Local

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who performed the tasks associated with mailing was the son of a candidate for delegate opposing Mr Wojciechowski does not violate the *Rules*. Mr Wojciechowski had the opportunity to observe the mailing process. The Election Officer investigation uncovered no evidence of any improprieties in connection with the mailing.

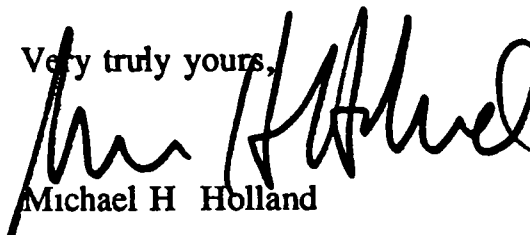
The Local's failure to properly advise Mr Wojciechowski of the total number of its members also does not constitute a violation of the *Rules*. Mr Wojciechowski was advised in advance of the date that his campaign literature was mailed that additional copies of his literature was needed. He chose not to provide additional copies of his literature. Further, of the 83 members who did not receive copies of Mr Wojciechowski's literature, 75 were ineligible to vote. The votes of 8 members would be insufficient to affect the outcome of this election.²

Finally, any violations by Local 102 of the *Rules* with respect to the campaign mailing of Mr Wojciechowski were known to Mr Wojciechowski no later than February 22, 1991, the date his campaign literature was mailed. No protest was filed until March 15, 1991, after the delegate and alternate delegate election for Local 102 had been concluded. Therefore, in accordance with the decision of the Independent Administrator in the matter of Barclay, 91-Elec App -111 (SA), the protest would have to be considered untimely.

In accordance with the foregoing, this 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

cc Frederick B Lacey, Independent Administrator
Edward T Ellis, Regional Coordinator

²Even assuming Local 102's original number, 88, was correct, the votes of 13 members would be insufficient to affect the outcome of the election.