



OFFICE OF THE ELECTION OFFICER
% 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 1, 1991

VIA UPS OVERNIGHT

Chris Schweitzer
10843 Lurline Ave
Chatsworth, CA 91311

Charles D. Roberts
Secretary-Treasurer
Teamsters Local 896
1616 W Ninth Street
Room 414
Los Angeles, CA 90015

Ed A. Russell, Jr
639 E Pondera St
Lancaster, CA 93535

Ferdie Clavie
8042 Nobel Ave
Van Nuys, CA 91402

Roger A. Smith
502 Avalon Way
Suisun City, CA 94585

Roosevelt Valley
c/o Experienced Stewards for
Change Plus Unity Slate
c/o The Coca-Cola Corporation
11536 Patton Rd
Downey, CA 90241

Re: Election Office Case No. Post-58-LU896-CLA

Ladies and 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 ("Rules") by Chris Schweitzer on her own behalf and on behalf of Ed Russell and Roger Smith. The Complainants were independent candidates for delegate from Local Union 896. They were opposed by the Experienced Stewards for Change Plus Unity Slate ("Stewards Slate"). This Slate was composed of Local Union Chief Stewards working at various facilities represented by the Local

Prior to the election, the Election Officer granted two protests filed by these independent candidates, who campaigned jointly. One protest concerned an incident at the Coca-Cola bottling plant, the Election Officer found that Roosevelt Valley, a member of the Steward Slate, engaged in threats and intimidation which violated the *Election Rules* (Election Office Case No. P- 672-LU896-CLA). Another protest concerned the

Chris Schweitzer

Page 2

right of these independent candidates to distribute campaign literature in the parking lot of the Miller Brewery in Irwindale, Colorado. In that case, the Election Officer found that IBT members, not employed by Miller, such as complainants here, had the right to use the company parking lot to distribute campaign literature (Election Office Case No P-665-LU896-CLA)

The election in Local 896 was conducted by mail ballot. Three thousand three hundred and three ballots were mailed, of which one thousand two hundred and twenty-three were returned. One thousand, one hundred and thirty-seven ballots were counted. The count occurred on March 27, 1991.

The Stewards Slate delegate candidates received the following numbers of votes

Rene Medrano	675
Richard Ruddock	637
Claudia Settle	604
Roosevelt Valley	544

The independent candidates received the following vote totals

Christine Schweitzer	452
Roger Smith	439
Ed A. Russell	383
Brian Van Buskirk	290

These are the results in the race for the two alternate delegate slots

Experienced Stewards Slate

John Chichester	624
Lenny Garza	619

Independent Candidate

James York	369
------------	-----

Thus, there was a 92 vote differential between the lowest vote getter on the Stewards Slate and the highest vote getter who ran as an independent. The margin between the second and third ranked alternate candidates was 250 votes.

The post-election protest contended that the election was improper, and thus should be rerun, for a variety of reasons. Each of the issues raised will be dealt with in separately numbered sections below.

I Campaign Mailing by the Stewards Slate

The complainants allege that the campaign literature sent by the Steward Slate was sent by metered mail. They contend that this fact indicates the Local distributed the campaign material on behalf of the Steward Slate.

The allegation was made by the protestors on April 14, 1991, more than two weeks after the conclusion of the election. The mailing in question was received by the membership of Local 896 approximately three weeks prior to the date of the ballot count. The *Rules* do not permit a member to await the outcome of an election and then protest alleged violations which occurred long before the date of the ballot count. *Rules* Article XI, § 1(a) and 1(b)(1)(a), see also In Re. Barclay, 91-Elec App -111

Further, the Election Officer has determined that the campaign literature mailed to Union members by the Steward Slate was not mailed in violation of the *Rules*. The postage meter number on the mailing is registered to a large mailing house. There is no allegation, and the Election Officer found no evidence, that the Local Union paid in whole or in part for the printing or distribution of the literature on behalf of the Steward Slate.

The *Rules* were not violated and this portion of the post-election protest must be **DENIED**

II The Role of the Local Union Attorney

Another issue raised by this post-election protest relates to the propriety of the attorney for Local 896, Robert Vogel, representing the Local in connection with an appeal by Ms. Schweitzer of the decision of the Election Officer in Election Officer Case No. P-672-LU896-CLA. The hearing on the appeal of the Election Officer decision took place on April 1, 1991.

The Election Officer's investigation revealed that Mr. Vogel did in fact participate in the hearing on this appeal. However, Mr. Vogel primarily audited the hearing for the Local. While the original protest involved a member of the Steward Slate, Mr. Vogel did not act on the behalf of any member of the Steward Slate during the hearing process.

Further this is a post-election protest and will be considered and remedied if the alleged violation may have affected the outcome of the election. 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 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 (2d Cir 1966). The hearing on the appeal in Election Office Case No. P-672-LU896-CLA took place on April 1, 1991. The delegate and alternate delegate election for Local

Union 896 had concluded on March 27, 1991 with the counting of the ballots. Thus Mr Vogel's participation in the appeal process, even if in violation of the *Rules*, could not have affected the outcome of the election.

This portion of the post-election protest neither alleges a violation of the *Rules*, nor, assuming a violation of the *Rules*, a violation that could have had an effect on the outcome of the election. Therefore this portion of the protest is also DENIED.

III Access

The final issues raised in the post-election protest refer to the pre-election protests filed by the complainants and decided by the Election Officer in Election Officer Case No P-665-LU896-CLA (decided March 27, 1991) and Election Officer Case No P-672-LU896-CLA (decided March 25, 1991). The complainants allege that the relief ordered in those cases was insufficient to protect the integrity of the election. They therefore request the election be rerun.¹

Both pre-election protests involved the ability of the complainants to campaign at worksites where Local 896 members are employed, but where none of the independent candidates were employed. In Election Officer Case No P-665-LU896-CLA the allegations were that the employer, Miller Brewing, prevented access by prohibiting the independent candidates entry to the employer's parking lot for campaign purposes. In Election Officer Case No. P-672-LU896-CLA the protestors alleged that Roosevelt Vallery, chief steward for Local 896 members employed at the Coca-Cola plant, and a candidate on the Steward Slate, prevented access by threatening and intimidating the independent candidates who attempted to campaign at the Coca-Cola site. The Election Officer required Miller Brewing to provide access to the parking lot for the purpose of campaigning (P-665-LU896-CLA) and found that Mr Vallery, by his conduct, violated the *Rules* and required Mr Vallery to sign and post a notice (P-672-LU896-CLA).

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." Thus, a violation of the *Rules* alone is not grounds for setting aside an election unless there is a reasonable probability that the election outcome may have been affected by the violation. Wirtz v Local Unions 410, 410(A), 410(B) & 410(C).

¹In addition to the alleged lack of access which resulted in the two pre-election protests, the protestors also suggest information about their candidacies may have not been available to other members of 896, due to lack of access by their supporters to the bulletin boards for the posting of their campaign literature and otherwise. Protestors suggest that the Election Officer determine whether this is a possibility by requiring the posting of the post-election protest and a request for information at all Local Union worksites and further by Election Officer Representatives visiting such worksites. The Election Officer has conducted his own investigation of the allegations of the post-election protests and finds no basis for expanding the investigation to include each and every member of Local 896.

International Union of 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 and/or whether there is a causal connection between the violation and the result or outcome of the election Dole v. Mailhandlers, Local 317, 132 LRRM 2299 (D C M D Alabama 1989) Since the Election Officer has already determined that the *Rules* have been violated in Election Officer Case Nos P-665-LU896-CLA and P-672-LU896-CLA, the issue then becomes whether said violations affected the outcome of the elections For the reasons set forth below, the Election Officer determines that the violations did not affect the outcome of the election

The investigation conducted by representatives of the Election Officer revealed that at the time of the election, Miller Brewing and Coca-Cola employed 194 IBT members 163 of those members were eligible to vote at the time of the count, 47 eligible members being employed by Miller Brewing and, 116 eligible members being employed by Coca-Cola² Fifty-two members who were eligible to vote and employed by Coca-Cola, or 45%, did vote, as did 13 of the eligible members employed by Miller Brewing, or 28% The rate of ballot return for the Local as a whole was 37%, that is, out of 3303 ballots that were mailed, 1223 were cast The combined average rate of return of ballots cast by eligible voters employed by Miller Brewing and Coca-Cola is consistent with the ballot return rate for the local as a whole

Complainants base their argument for rerun on the premise that, if they had been afforded appropriate access, all of the 163 eligible IBT members employed by Miller Brewing and Coca-Cola would have voted, and that the 65 who did vote may have voted differently Based upon the rate of return of cast ballots from Miller Brewing and Coca-Cola, the rate of return for cast ballots throughout the Local and the access Complainants did have to IBT members employed by those employers, the premise advanced by Complainants is not a reasonable one

In the first instance, these independent candidates were not without access to the IBT members employed by Miller Brewing and Coca-Cola These independent candidates did a campaign mailing to all members of the Local including those employed by Miller Brewing and Coca-Cola They also campaigned at Coca-Cola until the time of the incident with Mr Vallery, as detailed in Election Office Case No P-655-LU896-CLA Further, although the Election Officer determined that, consistent with the *Rules*, Miller Brewing was required to allow campaigning in the employee parking lot (Election Office Case No P-655-LU896-CLA), the independent candidates did have access to a private road, which employees use for ingress and egress, for the purpose of campaigning prior to the time that decision was issued Thus, the independent candidates, including Complainants, were able to reach the membership employed by Miller Brewing and Coca-Cola although they were prevented from the full access as

²The alternate delegate election could not have been affected by these violations in that the margin between the second and third ranked candidates was 250 votes, a number greater than the number of eligible voters employed by Miller Brewing and Coca-Cola

required by the *Rules*

As noted above, based upon the number of eligible voters who cast ballots in the delegate election, it is not probable that eligible voting members employed by Miller Brewing and Coca-Cola would have exceeded the number that did vote, 65. Even applying the higher rate of ballot return of the eligible members employed by Coca-Cola, to Miller Brewing, the total probable votes cast would only increase to 74 votes, i.e. if 45% of the eligible voters employed by Miller had voted, 22 rather than 13 eligible votes would have been cast, thus increasing the total of eligible votes cast by members employed by Miller Brewing and Coca-Cola by nine votes. Therefore, even assuming access at Miller Brewing and Coca-Cola had not been limited, the total number of votes, which reasonably could be assumed would be cast by eligible voters employed by these employers absent limitations on access, is 74 votes. Assuming again that each of these 74 votes would have been cast for the independent candidates, these votes are not sufficient to affect the outcome of the delegate election, the margin between the fourth and fifth ranked candidates being 92 votes. Therefore, the Election Officer determines that the violation of the *Rules* by Mr. Vallery and Miller Brewing as found by the Election Office in Election Office Case Nos. P-655-LU896-CLA and P-672-LU896-CLA, respectively, did not affect the outcome of the delegate election.

Accordingly, the protest is DENIED in its entirety.

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/mjv

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

IN RE:

CHRIS SCHWEITZER
ED RUSSELL, JR.
ROGER A. SMITH

and

IBT LOCAL UNION NO. 896

91 - Elec. App. - 148 (SA)

DECISION OF THE
INDEPENDENT
ADMINISTRATOR

This matter arises out of an appeal from a decision of the Election Officer in Case No. Post-58-LU 896-CLA. A hearing was held before me on May 7, 1991, at which the following persons were heard: the Complainant, Christine Schweitzer; Craig Yabuta, Miss Schweitzer's Campaign Adviser; George Scruggs, a Business Agent from Local 896; Geraldine Leshin, the Regional Coordinator; William C. Demers, the Adjunct Regional Coordinator; and John Sullivan, on behalf of the Election Officer.

Ms. Schweitzer was an unsuccessful independent candidate for delegate to the IBT Convention from Local 896. She filed a post-election protest on behalf of herself and two other unsuccessful independent candidates -- Ed Russell, Jr. and Roger A. Smith -- to challenge the election results.

Local 896 held its election for four delegates and two alternates by mail ballot. Of the 3,303 ballots mailed, 1,223 were returned. Of the returned ballots, 1,137 were counted. The counting occurred on March 27, 1991. The "Experienced Stewards for Change Plus Unity Slate" (the "Steward Slate"), which was comprised of Chief Stewards working at various facilities, won all four delegate positions and the two alternate positions. In the

election for delegates, the candidate on the Steward Slate with the fewest votes (Roosevelt Vallery with 544 votes) received 92 more votes than Ms. Schweitzer, whose 452 votes made her the independent candidate with the most votes. Overall, Mr. Vallery garnered almost 48 per cent of the counted ballots, as compared to Ms. Schweitzer's almost 40 per cent.

In the election for alternate delegates, the margin of victory was even greater. The candidate on the Steward Slate with the fewest votes defeated the sole independent candidate by 250 votes.

The Complainants first alleged that the Steward Slate used a Local Union mail meter to distribute campaign material. The investigation conducted by the Election Officer revealed that the postage meter in question was not the Local Union's; rather, it was registered to a mailing house. There is simply no evidence that the Local expended any of its funds on the mailing in question. Accordingly, the Election Officer denied this aspect of the protest. At the hearing before me, the Complainants did not challenge this ruling. Thus, it is affirmed.

The more troubling issue for the Complainants is one involving denial of access to Local employees working at a Coca-Cola facility and at a Miller brewing facility. 116 Local members are employed at the Coca-Cola facility, and 592 members are employed at the Miller brewing facility.

Supporters of the independent candidates attempted to campaign in the parking lot at the Miller brewery on March 13, 1991. Miller interfered with the supporters' campaigning. On March 26, 1991,

Miller advised the Election Officer that it had begun to allow distribution of literature at the security gate in its parking lot. The next day, March 27, 1991, the Election Officer issued a decision directing Miller to allow supporters of the independent candidates access into its parking lot. One of the successful Steward Slate candidates for delegate is employed at the Miller facility.

The Election Officer's investigation revealed that Coca-Cola never inhibited the independent candidate's right to campaign at its facility.¹

Post-election protests need only be remedied if the alleged violation "may have affected the outcome of the election." Election Rules, Article XI, Section 1.b.(2). In this case, the Election Officer failed to find a meaningful relationship between the violations and the election results.

¹ Ms. Schweitzer filed a pre-election protest alleging that Roosevelt Vallery (a successful delegate candidate on the Steward Slate) threatened and intimidated her while she was campaigning with two other independent candidates on March 14, 1991, at the Coca-Cola facility. The Election Officer found Mr. Vallery's action to be in violation of the Election Rules and directed him to post a notice affirming the rights of IBT members to engage in campaign activity without fear of intimidation or reprisal. Neither the Local nor Mr. Vallery appealed that decision. Instead, Ms. Schweitzer appealed the decision, expressing her dissatisfaction with the scope of the Election Officer's remedy. At Ms. Schweitzer's suggestion, the Election Officer modified his remedy to compel Mr. Vallery to also post a Spanish translation of the notice. The decision of the Election Officer, voluntarily modified to incorporate the posting of the notice in Spanish, was affirmed in all respects in In Re Schweitzer, 91-Elec. App. 118 (SA) (April 3, 1991).

Regarding the access to the Miller facility, the Election Officer observed that the Complainants and their supporters were not denied all access to the members at Miller. First, they had the opportunity to make contact with the Miller employees on a road leading to the Miller parking lot. While such access is not sufficient to pass muster under the Election Rules, for purposes of evaluating the impact on the election results, that contact must be considered. Indeed, the Election Officer's investigation disclosed that after the Complainants' supporters were asked to leave the Miller parking lot they continued to pass out literature outside the grounds and otherwise continued to campaign among IBT members employed at Miller.

As already noted, except with the one incident involving Mr. Vallery (see footnote 1), the Complainants were not hindered in any way in their access at Coca-Cola. The incident involving Mr. Vallery was addressed as a pre-election protest and remedied.

In addition, the Complainants contacted all members of Local 896 through a campaign mailing. While the campaign mailing is no substitute for face-to-face contact, this additional contact is significant in determining whether or not the denial of access to the Miller facility for the 13 day period between March 14 and March 26 may have affected the outcome of the election.

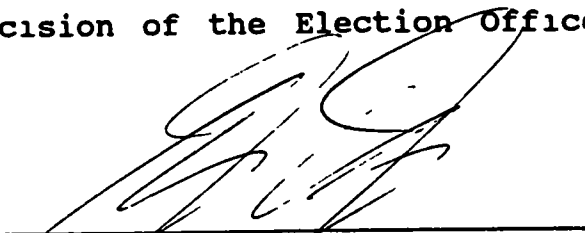
As noted in In Re Petroff, 91-Elec. App. 116 (SA) (April 1, 1991):

Naturally, in determining whether any violation "may have affected the outcome of an election," a certain amount of speculation must be exercised. In this connection, the

expertise of the Election Officer is entitled to some weight that will vary with the circumstances.

Here, there is no reason to disturb the Election Officer's expert determination. The Election Officer's finding that there was no connection between the alleged violations and the outcome of the election is supported in the record. As noted, although the Complainants and their supporters were admittedly denied access to Miller for a 13 day period while the ballots were in the hands of the members, they availed themselves of alternate means of communication during that period. Examining the percentage of votes garnered by the candidates against this background, it does not appear that the additional access to the Miller plant for the 13 day period would have changed the election results.

Accordingly, the decision of the Election Officer is affirmed.²



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

Dated: May 10, 1991

² At the hearing, the Complainants raised allegations regarding restrictions on the use of Union bulletin boards. These allegations are not before me on this appeal as they were not properly raised below. Moreover, there is no evidence to suggest that Complainants had a right, established by past practice, to access the Union bulletin boards.

June 21 . Schweitzer Election Appeal

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA, :

Plaintiff, :

-v- :

ORDER

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO, et al., :

88 CIV. 4486 (DNE)

Defendants. :

-----X

IN RE: PETITION FOR REVIEW OF
DECISION 91-ELEC. APP.-148 OF
THE INDEPENDENT ADMINISTRATOR
-----X

EDELSTEIN, District Judge:

WHEREAS petitioner Schweitzer appeals decision 91-Elec. App.-148 of the Independent Administrator, which affirmed the Election Officer's decision Post-58-LU896-CLA; and

WHEREAS the Election Officer ruled that Schweitzer was not hindered in her access to the Coca-Cola but on one occassion which was remedied by a pre-election protest and declined to upset the election results; and

WHEREAS the Independent Administrator found that no conduct occurred which may have affected the outcome of the election at Local 896; and

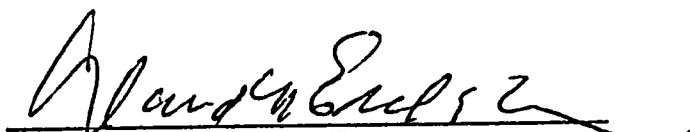
WHEREAS this Court and the Court of Appeals have ruled that determinations of the Independent Administrator "are entitled to great deference." United States v. International Brotherhood of Teamsters, 905 F.2d 610, 616 (2d Cir., 1990), aff'g March 13, 1990 Opinion & Order, 743 F. Supp. 155 (S.D.N.Y., 1990).

WHEREAS upon review, the determination of the Independent Administrator is fully supported by the evidence; and

IT IS HEREBY ORDERED that the decision 91-Elec. App.-148 of the Independent Administrator is affirmed in all respects.

So Ordered.

Dated: June 21, 1991
New York, New York



U.S.D.J.