



OFFICE OF THE ELECTION OFFICER
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May 2, 1991

VIA UPS OVERNIGHT

Don Villa
c/o The Rank & File Slate
405 Wawecus Hill Rd
Norwich, CT 06360

Kenneth V Mornill, Jr
Secretary-Treasurer
c/o The Executive Board Slate
c/o Teamsters Local 493
18 Crescent St
Uncasville, CT 06382

Frank Scopino
37 Stollman St
Colchester, CT 06415

Re: Election Office Case No. Post-62-LU493-ENG

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 Donald Villa, a candidate for delegate on the Rank and File Slate from Local 493 to the 1991 IBT International Convention. Mr Villa contends that the delegate and alternate and alternate election should be rerun for the following reasons

- 1) A printing error on the original ballots, requiring that the ballots be reprinted and remailed and counted at a date later than the original count date, disadvantaged him and the other member of his slate,
- 2) Four members of Local 493 did not receive ballots,
- 3) A ballot which was marked for the opposing slate but which also contained marks for him and his slate mate individually was improperly awarded to the opposing slate, and
- 4) Local 493 members not eligible to vote, specifically members employed by Electric Boat, were permitted to vote, while the challenges to ballots of members eligible to vote, specifically those employed at UPS, were sustained

In a subsequent submission, Mr Villa also alleged that Frito-Lay, an employer of Local 493 members, failed to abide by the agreement it had reached with the Election Officer in Election Office Case No P-462-LU493-ENG, and failed to distribute his campaign materials to the IBT members employed by Frito-Lay, disadvantaging him and his slate. In responding to the post-election protest, Kenneth V Morrill, Jr, Secretary-Treasurer of Local 493 and a delegate candidate on the Executive Board Slate, contended that the propriety of all sustained ballot challenges, not just the challenges sustained with respect to members employed by UPS, should be reviewed.

Local Union 493 conducted its delegate and alternate delegate election exclusively by mail ballot. The ballots were originally mailed on or about February 19, 1991 and were scheduled to be counted on March 9, 1991. After the ballots had been mailed, a printing error was discovered, a delegate candidate on the Rank and File Slate was erroneously listed on the ballot as a candidate for alternate delegate and the ballot also contained, as an alternate delegate candidate, the unopposed alternate delegate candidate nominated as a member of the Executive Board Slate. Thus new ballots were printed, in a different color, in envelopes clearly identifying the packages as a "special second mailing". The new ballots were mailed on or about March 11, 1991. The ballot count occurred on March 27, 1991. See Election Office Case No P-587-LU493-ENG.

The mail ballots were counted, as indicated above, on March 27, 1991. Six hundred and sixty-seven ballots were cast, 13 of such ballots were void. Initially, 88 ballots were challenged. The challenges were subsequently resolved with 79 challenges being sustained and the ballots of nine members, one member employed by UPS, five members employed by Electric Boat and the remaining members employed by other employers, counted.

The ballot tally was as follows:

Delegate Candidates

Rank and File Slate		Executive Board Slate	
Donald A Villa	284	Kenneth V Morrill, Jr	289
John Sarantopoulos	291	Frank Scopino	273

There was one winning delegate candidate from each slate. Five votes separated Mr Villa, the losing delegate candidate from the Rank and File Slate, from Mr Morrill, the winning candidate from the Executive Board Slate.

This protest is a post-election protest, Article XI, § 1(b)(2) provides that "Post-election protests shall only be considered and remedied if the alleged violation may have affected the outcome of the election." A causal connection between the alleged violation and the results of the election must be established. Dole v Mailhandlers, Local 317, 132 LRRM 2299 (M D Alabama 1989). There must be a reasonable probability that the alleged violation may have, in fact, affected the election results. Wirtz v Local

Don Villa
page 3

Unions 410, 410(A), 410(B) & 410(C), International Union of Operating Engineers, 366 F 2d 438 (2nd Cir 1966) The Election Officer considered each of the post-election allegations in accordance with these legal standards

I. The Dual Ballots

Mr Villa contends that the printing errors on the first ballot, and the necessity of printing and mailing a second ballot, prejudiced the campaign of the Rank and File Slate. He contends that the literature mailed by the Rank and File Slate to all members of the Local, mailed to coincide with the initial ballot mailing, lost its effectiveness due to the delay. He also contends that the Executive Board Slate engaged in additional campaigning activities during the two-and-a-half week period between the mailing of the first ballots and the mailing of the second ballots, which further prejudiced the Rank and File Slate.

The Election Officer found that each slate competing in this election undertook a single mailing to the members of Local 493. Both mailings were accomplished at or about the date the initial, erroneously printed ballots were mailed. The campaign literature was obviously received by the voters prior to the time that any votes were cast, albeit somewhat earlier than either slate desired. The prejudice, if any, of having the campaign material received "too early" was borne equally by both slates. One member of each slate was also a winning candidate in this election.

In many respects, the reprinting and re mailing of ballots which occurred with respect to Local 493's delegate and alternate delegate election resembled a rerun election. The new ballots were not mailed until after the originally scheduled count date. All candidates were notified on February 26, 1991, approximately two weeks prior to the date that the new ballots were mailed, that a second set of ballots would be mailed and the date on which such second set would be mailed. Thus, all candidates and slates, including Mr Villa and the Rank and File Slate, had the opportunity to prepare and mail campaign literature to arrive with the second ballot. While the Election Officer is aware of the expense in accomplishing a second mailing, the situation is no different than the situation which occurs when the Election officer concludes that a rerun election is necessary, the very remedy Mr Villa requests in his post-election protest.

Mr Villa also contends that the fact that new ballots were required to be mailed gave the Executive Board Slate additional time to campaign. The same opportunity was, however, available to Mr Villa and his slate. All candidates were notified simultaneously of the need for new ballots to be mailed, the date of such mailing as well as the date such new ballots would be counted. Again, conceptually, the situation was no different than if a rerun election was being conducted. It certainly was not a violation of the *Rules* for the Executive Board Slate to continue to engage in campaign activities after being notified that new ballots would be mailed. Mr Villa and his slate had the same opportunity.

Don Villa
page 4

For the foregoing reasons, the Election Officer concludes that Mr Villa and the Rank and File Slate were not discriminatorily prejudiced by the necessity to reprint and remail the election ballots for this election. Neither were the *Rules* violated because the Executive Board Slate engaged in campaigning activities during the additional campaign period provided by the necessity to reprint and remail the ballots. Thus, this portion of Mr Villa's post-election protest is DENIED.

II. Frito-Lay

A pre-election protest, Election Office Case No P-462-LU493-ENG, was filed by Mr Villa contending that Frito-Lay Corporation, an employer of Local 493 members, improperly prevented him and his slate-mate from distributing campaign materials inside of its facility or in its parking lot. This protest was resolved by agreement of Frito-Lay to distribute all campaign literature received by it from any candidate, by placing such literature in each individual member's employee mailbox.

Although not part of his original post-election protest, Mr Villa, in subsequent submissions to the Election Officer, contended that three Local 493 members employed by Frito-Lay did not receive the campaign literature he had given to Frito-Lay to distribute in accordance with the decision in Election Office Case No P-462-LU493-ENG. Mr Villa contends that his slate was thereby disadvantaged.

The Election Officer's investigation found no failure on the part of Frito-Lay to comply with its agreement as set forth in Election Officer Case No P-462-LU493-ENG. Jarvis Jefferson, Personnel Manager of the Dayville, Connecticut Frito-Lay facility received literature from the Rank and File Slate for distribution. The material was given by him to the Logistics Manager who, in fact, placed the material in the employee mailboxes of each Local 493 member employed by Frito-Lay. To the extent that three IBT members employed by Frito-Lay did not receive the literature - whether because another member removed it or otherwise - was not the fault of Frito-Lay. Frito-Lay provided the access it was required to provide in accordance with the Election Officer's decision in Election Office Case No P-462-LU493-ENG.¹

The *Rules* were not violated. This portion of Mr Villa's post-election protest is accordingly DENIED.

III. The Ballot Mailing

Mr Villa in his post-election protest states that he is aware of four members who did not receive ballots. Two members advised him on March 25, 1991, two days before the ballot count, that they had not received ballots. He first learned about the other two members after the count had been concluded.

¹In addition, as noted above, Mr Villa and the Rank and File Slate mailed campaign literature to all members of Local 493, including the members employed by Frito Lay.

Don Villa
page 5

With respect to the members who claimed on March 25, 1991 that they had not received ballots, Mr Villa states that he immediately contacted the Regional Coordinator but was told that it was too late for these members to receive ballots. The investigation conducted by the Election Officer reveals that the Election Officer representative who received the call, Peter Hodes, advised Mr Villa that it too late to mail ballots to these two members. Mr Villa was told that these members could, if they desired, obtain ballots in person by coming to the office of the Regional Coordinator.

The notice of election which was distributed to all of Local 493 members clearly provides that any member not receiving a ballot should contact the office of the Regional Coordinator. See also *Rules*, Article XII § 3(c)(3). The Regional Coordinator has advised the Election Officer that seven (7) members did so and ballots were mailed as requested. There is no evidence to suggest that there was any irregularity in connection with the second mailing of the ballots or that numerous members did not receive ballots.

Mr Villa states that some members may not have received the second mailing of the ballot and therefore would be unaware that the first ballot they received, voted and returned would not be counted. No evidence had been presented to support this contention. All members to whom the original ballot was mailed were sent the reprinted ballot. Indeed the Election Officer would note that approximately 40 more of the second set of ballots were returned. The protest as to receipt of the ballots is DENIED.

IV. The Ballot Count

Mr Villa contends that during the election count which occurred on March 27, 1991, Local 493 members who were employed by Electric Boat but not members in good standing, were found to be eligible to vote and their votes were counted. Conversely, Mr Villa contends that members who were in good standing, employed by UPS, and thus eligible to vote, were declared ineligible and their ballots not were counted. Due to the number of sustained challenged ballots, 79, and the small margin between the second and third ranked delegates, five votes, the Election Officer has conducted a review of all challenged ballots cast by members employed by Electric Boat and UPS and all other sustained ballot challenges. The findings of the Election Officer are set forth below.

A. Members Employed by Electric Boat

Mr Villa contends that ballots of members employed Electric Boat were challenged, the challenges were rejected by the Regional Coordinator and the votes were counted even though these members were in arrears in their dues, not having paid dues

²In response to the protest, Mr Morrill contended that the eligibility of all voters found to be ineligible, not merely those employed by UPS, should be reviewed. The Election Officer has done so.

through February 1991. The investigation conducted by the Election Officer reveals that seven members employed by Electric Boat who cast a ballot had their ballot challenged. Five of the challenges were rejected by the Regional Coordinator and the ballots were voted³. These five challenges were all based on alleged dues arrearages, that is the contention that the members' dues had not been paid through February, 1991. The five members whose votes were counted are

Charles Bishop
Gary Kosinski⁴
Claude McKenna
Michael Ford
Renato Sampaio

All of these members were on check-off dues payments by their employer Electric Boat. The Election Officer reviewed the Titan records for each of these members. With regard to members Claude McKenna, Michael Ford and Renato Sampaio, the TITAN record reflected that each of them had a dues check-off payment posted on March 25, 1991 which completed payment of dues through at least February of 1991. Their dues were paid, prior to the count date, through the month prior to the month of the election. Thus, the decision of the Regional Coordinator to count the ballots cast by Claude McKenna, Michael Ford and Renato Sampaio is affirmed.

The TITAN record for Charles Bishop reflects that as of his most recent dues payment, made via dues check-off and posted on March 25, 1991, paid his dues through January of 1991. Review of the TITAN record for Mr. Bishop reflects that the dues arrearage arose from the absence of dues check off payments for the months of January and February of 1991. The Election Officer contacted Electric Boat to determine if Mr. Bishop had earnings in these months from which dues could have been deducted. Electric Boat verified that Mr. Bishop did have earnings in both months. Article X, § 5(c) of the IBT Constitution provides that the good standing of member may not be affected by their employer's failure to remit dues in months in which they had earnings unless and until the Union notifies them by personal letter of such arrearage and thirty days has past since the receipt of such notification. Mr. Bishop was not so notified by the Local. Thus, Mr. Bishop was eligible to vote and the determination of the Regional Coordinator to count his ballot is affirmed.

B. Ballots Challenged on the Basis of Unpaid Initiation Fees/Membership Status

Voter eligibility for a mail ballot election is determined when the mail ballots are

³The remaining two challenges, based upon the failure of the members to have fully paid their initiation fees, were sustained. See Paragraph B of this section.

⁴The Election Officer has not completed his investigation with regard to the eligibility of Mr. Kosinski. It is unlikely that the election will be determined by one vote. However, in the event such is the case after the completion of the additional count as ordered by this determination, the Election Officer will proceed with the investigation of the eligibility of Mr. Kosinski.

Don Villa
page 7

counted. To be eligible to vote a member must be a good member in good standing of the Local Union. Payment of the full initiation fees is a prerequisite to membership in the Local. Thus, to be eligible to vote in the Local 493 delegate election on March 27, 1991, a member must have paid his/her initiation fee as of that date. IBT Constitution, Article X, § 5(c). Further, once a member has taken a withdrawal card that member is no longer a member in good standing of the Local even if dues have been paid through the month prior to the month of the election. Article XVIII, §6

Six member who cast ballots were determined to be ineligible to vote to each of them having requested and received a withdrawal card prior to the date of the election. A review of the Titan records for each such member reflects that the decision of the Regional Coordinator to sustain these challenges. Therefore, the determination of the Regional Coordinator or to these six challenges is affirmed.

Eleven ballot challenges were sustained on the basis of unpaid initiation fees. The Election Officer has reviewed the TITAN records of all the members who cast these ballots to determine whether the failure to pay the full initiation fee was due to employer error, that is failure of the employer to check off initiation fees in accordance with check off arrangements between the Local and the employer. Except for the three (3) members discussed below all members whose ballots were challenged, and the challenged sustained on the basis that they had not paid their initiation fees, had not worked a sufficient period of time or had insufficient earnings to fully pay their initiation fees.

Two of these members, Thomas Barr (047-76-5363) and Chris Williams (045-76-2193) are employed by UPS. Both members had sufficient earnings and had worked a sufficient period to have had the total initiation fee deducted and remitted to the Local Union by March 27, 1991, however, their employer, UPS, failed to do so. Thus, in accordance with Article X §5 (c) of the IBT Constitution, their good standing is not adversely affect due to error of UPS to properly deduct and remit their initiation fees.⁵ The Election Officer determines that Thomas Barr and Chris Williams are eligible to vote in the Local 493 delegate election.

Donald LeBlanc (044-54-7986) is employed by Laidlaw. The TITAN record for Mr. LeBlanc reveals that he has paid an initiation fee of \$50 but that he owes an additional \$730 in initiation fees. The Local has advised the Election Officer, and the Election Officer has received appropriate documentation reflecting, that the issue of the appropriate amount of Mr. LeBlanc's initiation fee, and dues, is presently a matter of dispute between Laidlaw and the Local. Mr. LeBlanc is being paid, and his dues and initiation fee have been deducted, by Laidlaw pursuant to a collective bargaining agreement between Laidlaw and the Local. The Local contends however that Mr. LeBlanc should be paid under the terms of a different agreement with a higher wage scale, if so paid, Mr. LeBlanc's dues and initiation fee would be far greater. The matter

⁵The Election Officer also reviewed the TITAN records for these two members to insure that each of them were current in their dues, having paid their dues through February of 1991.

was the subject of a court case and is presently pending arbitration

Article X, § 5(c) of the IBT Constitution provides that a member shall not lose good standing for his employer's failure to properly remit dues. Here, Laidlaw checked off Mr. LeBlanc's initiation fee and dues in an amount appropriate to the wages being paid. Local 493 contends that the wages should be greater, which would increase Mr. LeBlanc's initiation fee and dues obligation to the Local. Clearly a member cannot lose good standing status due to the failure of his employer to pay him at the rate at which the dues and initiation fee are being assessed by the Local, where the Local's assessment is based upon its argument that higher wages, and thus a larger check-off, is required by the employer. Thus, the Election Officer determines that Donald LeBlanc is eligible to vote in the Local 493 delegate election.

C. Late Dues Payments

The remaining challenges which were sustained by the Regional Coordinator were sustained on the basis of dues arrearages, that is the TITAN records available at the time of the count indicated that each of those members had not paid their dues through February of 1991. The Election Officer has reviewed more current TITAN records of all remaining members whose ballots were challenged and the challenges sustained along with Local Union records and, when necessary, employment information from the individual member's employer. As a result of this investigation, the Election Officer determines that the following members were eligible to vote in the Local 493 delegate election for the reasons discussed below.

Five members made cash payment of dues sufficient to pay their respective dues through February of 1991 prior to the close of business on March 27, 1991, the day of the count.⁶ Thus, the following members were members in good standing and eligible to vote: Vern Collins (048-26-0337), Sean Gallagher (046-76-4721), Chris Lemig (045-34-9933), Edward Moniz (037-18-0283), and Holman Smith (040-62-1299).

Six members, all on dues check off payments by their respective employers, showed a variety of irregularities in their TITAN records which led to an appearance of a dues arrearage and the subsequent challenges. In all cases, the Election Officer investigation determined that the arrearage arose from periods when the members in question both worked and had earnings in the month sufficient to permit the employer to check off and remit the full amount of their dues. Therefore, in accordance with the IBT Constitution, Article X, § 5(c), the good standing of these members may not be adversely affected by their employers' failure to remit dues in months in which they had earnings, unless and until the Union notifies each of them by a personal letter of such arrearage and they fail to pay such arrearage within the next 30 days. No such

⁶The Election Officer has determined that the appropriate cut-off date for payment of dues by a member to be eligible to vote was close of business on March 27, 1991, the date of the count, pursuant to Article X, §5(c) of the IBT International Convention absent any notice to the Local membership to the contrary.

Don Villa
page 9

notification was timely provided by the Local to these members. Accordingly, the following members are eligible to vote: Steven Dubro (191-34-4830), Richard Dujack (047-54-1228), Javier Hernandez (588-78-7070), Raymond Kantor (045-14-1276), Augustine Mezzella (048-24-6013) and Daniel Wagner (040-70-3488).

Finally, Mr. Villa contends that one ballot was counted as a vote for the Executive Board Slate when the member had voted for Mr. Villa and Mr. Sarantopoulos individually and also voted for the Executive Board Slate as a slate. Article XII, § 5(f) of the *Rules*, provides that if on any one ballot, the total of candidate votes cast exceeds the number of candidates to be elected for such a position that portion of the ballots shall be void, except where a voter has voted for a slate, in which case the slate vote only shall be counted. Thus, a determination of the Regional Coordinator to count the ballot marked as described above as a vote for the Executive Board Slate was in full conformity with the *Rules*. However, the Office of the Regional Coordinator has reviewed all ballots which were counted and note that no such ballot was cast.

V. Summary

Based on the forgoing, it is the determination of the Election Officer that the protest of Mr. Villa is GRANTED only to the extent that the ballots of certain voters, previously challenged and not counted, are to be counted. Accordingly, the Election Officer directs that the ballots cast by the following fourteen (14) members be counted:

Thomas Barry (047 76 5363)
Vern Collins (048-26-0337)
Steven Dubro (191-34-4830)
Richard Dujack (047-54-1228)
Sean Gallagher (046-76-4721)
Javier Hernandez (588-78-7070)
Raymond Kantor (045-14-1276)
Donald LeBlanc (044 54 7986)
Chris Lemig (045-34-9933)
Augustine Mezzella (048-24-6013)
Edward Moniz (037-18-0283)
Holman Smith (040-62-1299)
Daniel Wagner (040-70-3488)
Chris Williams (045-76-2195)

These ballots will be counted under the direction Regional Coordinator Elizabeth Rodgers and Adjunct Coordinator Hank Murray who will advise the Local and all candidates, or their slate representatives, of the date, time and place of the additional count. The protest in other respects is DENIED.

Don Villa
page 10

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
Elizabeth A Rodgers, Regional Coordinator
Hank Murray, Adjunct Regional Coordinator