



OFFICE OF THE ELECTION OFFICER  
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
25 Louisiana Avenue, NW  
Washington, DC 20001

Michael H Holland  
Election Officer

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April 24, 1991

**VIA UPS OVERNIGHT**

Robert R Carr  
3210 Glen Echo Dr  
Santa Rosa, CA 95404

Brian Beaver  
c/o The Leadership Slate  
Secretary-Treasurer  
IBT Local Union 624  
1371 Neotomas Ave  
Santa Rosa, CA 95401

Bob Withington  
c/o The Delegate  
Candidates Slate  
8589 Petaluma Hill Rd  
Penn Grove, CA 94951

Tom Washington  
8139 Countryside Court  
Windsor, CA 95492

Doug Rounciman  
UPS Division Manager  
c/o United Parcel Service  
3860 Cypress Drive  
Petaluma, CA 94954

Vacu-Dry Corp  
Plant 1 & 2  
1365 Gravenstein Hwy , S  
Sebastopol, CA 95473

Re: Election Office Case No. Post-63-LU624-CSF  
P-707-LU624-CSF  
P-715-LU624-CSF

Gentlemen

Pre- and post-election protests were filed under Article XI, § 1 of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Brian Beaver, Secretary-Treasurer of Local 624 and candidate for delegate in Local 624's delegate election, and Bob Carr, a member of Local 624. On April 10, 1991, the Election Officer consolidated the above referenced protests since all the claims involved allegations concerning Local 624's delegate election, which was held on March 28, 1991<sup>1</sup>

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<sup>1</sup>Mr Brian Beaver, Secretary-Treasurer of Local 624 and unsuccessful candidate in Local 624's delegate election, filed a complaint with the Election Officer alleging that various employers had violated members' access rights to engage in campaigning as

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Brian Beaver  
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### I. Results of Local 624's Delegate Election.

Local 624's delegate election was conducted exclusively by mail ballot. Six hundred sixty-five members returned their ballots. Eight ballots were void, and 43 ballots were challenged. Local 624 elected three delegates to the IBT International Convention. The tally of the ballots was as follows:

<u>Delegate Candidates</u>	<u>Vote Tally</u>
Jim Blair	334
Bob Withington	321
Jim Gallagher	304

guaranteed under Article VIII, § 10 of the *Rules*. Pursuant to discussions which have occurred between such employers and representatives of the Election Officer, such employers have agreed to provide access for campaigning purposes as required by the *Rules*. Mr. Beaver has now advised the Election Officer he wishes to withdraw his complaint. The Election Officer considers Mr. Beaver's complaint concerning the lack of access to various employer facilities to have been RESOLVED and thus will permit the withdrawal of Mr. Beaver's complaint.

With respect to one of the employers about which Mr. Beaver protested, Vacu-Dry, counsel for Vacu-Dry has assured the Election Officer that it will permit the posting of campaign literature on general purpose bulletin boards at its facilities as well permit IBT members, whether or not employed by it, to distribute campaign literature near the entrance to the parking lot at its plants. However, counsel contends that Vacu-Dry may prohibit campaigning by members employed by it in non-work areas on non-work time under the terms to its collective bargaining agreement with the IBT. The Election Officer notes that the terms of a collective bargaining agreement cannot limit the rights of Union members to engage in campaign activities during non-work times in non-work areas. NLRB V. Magnavox, 415 U.S. 322 (1974). Accordingly, by this decision the Election Officer notifies Vacu-Dry that it must permit IBT members employed by it to engage in campaign activities in non-work areas during non-work times.

Mr. Beaver also filed a complaint with respect to the return addresses and metered postage on the mail ballot return envelopes. Mr. Beaver notified the Election Officer that he wishes to withdraw this protest. Since the Election Officer's investigation did not find any facts which would support Mr. Beaver's allegations with respect to the mail ballot return envelopes or any facts which suggest that ballots voted and returned by members of Local 624 did not appropriately reach the post office box established for receipt of such ballots, the Election Officer also permits this second protest to be withdrawn.

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Harley King	302
Brian Beaver	262
Karla Reid	246

Two slates appeared on the Ballot Mr Beaver's slate included Ms Reid and Mr Gallagher

## II. Use of Union Funds.

Mr Robert Carr, a member of Local 624, alleges that Brian Beaver, Secretary-Treasurer of the Local, used his automobile, for which he receives an allowance from the Union, for campaigning purposes in violation of the Article VIII of the *Rules*. Specifically, Mr Carr alleges that Mr Beaver placed a sign on the back rear windows of his vehicle which stated "Vote for Brian Beaver and John Gallagher for Delegates". In support of his allegation, Mr Carr submitted photographs which were taken of Mr Beaver's car.

The Election Officer's investigation disclosed the following facts. Local 624's Bylaws provide that the Local Union shall provide the Secretary-Treasurer with a car allowance to compensate the Secretary-Treasurer for his use of his personal vehicle for conducting Union business. The evidence disclosed that Mr Beaver placed the campaign sign in his vehicle on the day of the count. There is no evidence to indicate that any campaign literature was posted in the vehicle's windows prior to that date. Article VIII, § 10 of the *Rules* provides that

Union funds, facilities, equipment, stationery, etc may not be used to assist in campaigning unless the candidate reimburses the Union for such costs and such goods and services are equally available to all candidates and all candidates are notified in advance of the availability of such goods and services.

Thus, the issue raised by Mr Carr's protest is whether the use of the car was the use of union equipment - a *Rules* violation - or, alternatively, whether only Mr Beaver's personal property was used for campaigning purposes - not a *Rules* violation. The Election Officer concludes however, he need not, and therefore declines to, determine whether a violation occurred by Mr Beaver's use of the car for posting a campaign sign.

This protest is being considered post-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).

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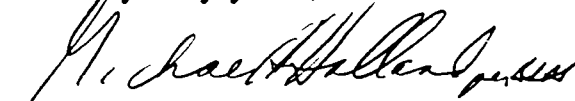
410(B) & 410(C), International Union of Operating Engineers, 366 F 2d 438 (2nd Cir 1966)

The alleged violation could not have affected the results of this election. First, Mr Beaver received the second lowest number of votes cast of all delegate candidates, the alleged violation certainly did not affect Mr Beaver's candidacy. Second, the alleged violation occurred on the day the ballots were being counted, after all votes had been cast, the alleged violation could not have affected how any member voted in the delegate election.

This protest is being considered post-election. The alleged violation could have not affected the results of the election. Therefore, Mr Carr's 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/grh

cc: Frederick B Lacey, Independent Administrator  
Donald E Twohey, Regional Coordinator

IN RE

ROBERT R CARR

and

BRIAN BEAVER, on behalf of  
THE LEADERSHIP SLATE

and

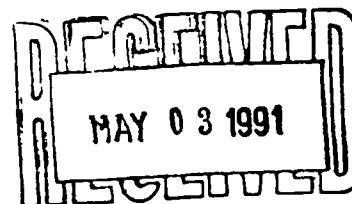
VACU-DRY CORPORATION

and

IBT LOCAL UNION NO. 624

91 - Elec. App. - 143 (SA)

DECISION OF THE  
INDEPENDENT  
ADMINISTRATOR



This matter arises out of an appeal from a Decision of the Election Officer in Case No. Post63-LU624-CSF. A hearing was held before me by way of telephone conference on May 1, 1991, at which the following persons were heard: the complainant, Robert R. Carr; Brian Beaver, the Secretary-Treasurer of Local 624; and John J. Sullivan, on behalf of the Election Officer.

Mr. Carr is a member of Local 624. Local 624 elected its three delegates to the 1991 IBT International Convention by mail ballot. Two slates and one independent candidate appeared on the ballot. Mr. Beaver headed the "Teamsters Local No. 624 Leadership Slate" (the "Leadership Slate") Two other candidates were on the Leadership Slate along with Mr. Beaver. Ballots were counted on

April 1, 1991. Mr. Beaver lost in his bid for a delegate spot. Only one member of Mr. Beaver's slate was elected.

Mr Carr, by way of post-election protest, alleges that Mr Beaver violated the Rules For The IBT International Union Delegate And Officer Election (the "Election Rules") by using his "Union car" as a "rolling billboard" to advertise his candidacy and that of his slate. As a post-election protest, Mr. Carr's complaint

[S]hall only be considered and remedied if the alleged violation may have affected the outcome of the election.

[Election Rules, Article XI, Section 1.b.(2)]

Under this standard, before a determination is made whether any action "may have affected the outcome of the election," an initial determination must first be made whether there is even a violation of the Election Rules. In addressing that question, the Election Officer found no such violation.

Local 624's By-laws provide that the Local shall provide the Secretary-Treasurer with a car allowance to compensate the Secretary-Treasurer for his use of his personal vehicle for conducting Union business. Mr. Beaver receives a car allowance from the Local as required by the Local's By-laws. Mr. Beaver placed a sign in his car supporting his candidacy and the candidacy of his slate. While there is some dispute as to the frequency with which Mr. Beaver displayed the sign, that dispute need not be resolved here.

The first issue raised in Mr. Carr's protest is whether the use of Mr. Beaver's car to promote his candidacy was the use of

Union equipment. This would be an Election Rules violation Article VIII, Section 10.c. of the Election Rules prohibits the use of Union funds and equipment to assist in campaigning unless the Union is reimbursed by the candidate and all candidates are notified as to the availability of the goods and services. The Election Officer concluded that the car in which Mr Beaver displayed the sign was not the Union's car, it was Mr. Beaver's personal vehicle. This is an accurate characterization. Although Mr Beaver may have been using his car allowance to defray the cost associated with using his car for Union business, that subsidy does not convert his personal car into a "Union car." The car allowance is just another form of compensation from the Union. It is clear that a candidate is free to use his own resources to aid in his campaign. See, e.g., In Re: Gregory, 91 - Elec. App. - 135 (SA) (April 29, 1991) ("Thus, given that the Local-owned cars are used by the Business Agents for personal reasons, it is not a violation of the Election Rules for a Business Agent to use his car to travel to a worksite to campaign.")

Mr. Carr raises yet another issue. He claims that Mr. Beaver had an unfair advantage in that as an officer of the Union he had greater access to Local Union members than other candidates who have to work during the day. In other words, members were likely to see Mr. Beaver's sign because his Union business required him to drive to worksites and other areas frequented by members. While Mr Beaver may have had a greater opportunity to visit with members



throughout the course of the day, given the nature of his job, such an advantage is not an unfair one which would constitute a violation of the Election Rules

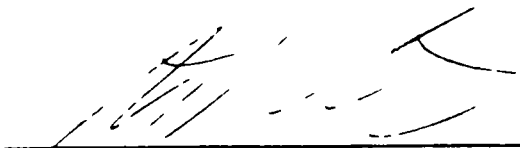
While the Election Rules prohibit candidates or members from campaigning during their working hours, "[c]ampaigning incidental to work is not . . . violative of" the Election Rules. Article VIII, Section 10 a. Mr. Beaver's display of the sign in his car is certainly incidental to his work. It is similar to the wearing of a campaign button. See, e.g., In Re: Veneziano, 91 - Elec App. - 62 - (SA) (February 8, 1991).

Moreover, it is not suggested that any other member of the Union was prohibited from displaying similar signs in their cars. Thus, this is not a situation where Mr. Beaver was given a right not granted to others.

Still further, Mr Beaver cannot be punished because of the access his job allows him. For example, truck drivers have a greater opportunity to have contact with other members than do warehouse workers. If truck drivers choose to engage in incidental campaigning on work time they do not breach the Election Rules. See, e.g., In Re: Teller, 91 - Elec. App. - 92 (SA) (March 12, 1991) ("It is clear that Mr. Teller's activity of 'waving' a sign at other drivers while performing his duties [driving his truck] is precisely the kind of incidental activity that the Election Rules do not prohibit.")

While the Election Rules are designed to level the playing field and prohibit unfair advantage, it is not the intention of the Election Rules to handicap a fair advantage that a candidate may enjoy <sup>1</sup>

Accordingly, the Election Officer's denial of Mr. Carr's protest is affirmed



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

Dated: May 2, 1991

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<sup>1</sup> Mr. Carr also argues that in past elections Mr. Beaver would not have been permitted to display the sign in his car. The Election Officer is not bound by the practice of the Local in past elections. To the extent past practice afforded lesser rights than those guaranteed by the Election Rules, such past practice will be given no weight.