



OFFICE OF THE ELECTION OFFICER  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
25 Louisiana Avenue, NW  
Washington, DC 20001  
(202) 624 8778  
1 800 828 6496  
Fax (202) 624 8792

Michael H Holland  
Election Officer

Chicago Office  
% Cornfield and Feldman  
343 South Dearborn Street  
Chicago, IL 60604  
(312) 922 2800

March 18, 1991

**VIA UPS OVERNIGHT**

Brian Barclay  
7593 Lee Drive  
Buena Park, California 90620

Ed J Mireles  
Secretary-Treasurer  
IBT Local 952  
141 South Marks Way  
Orange, California

Re: Election Office Case Nos. Post9-LU952-CLA  
P-207-LU952-CLA  
P-223-LU952-CLA  
P-297-LU952-CLA

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*") Brian Barclay is a nominated candidate for delegate to the 1991 IBT International Convention from Local 952 and a member of the Working Teamsters for Carey Slate. In his protest, Barclay alleges that the outcome of the delegate and alternate delegate election in Local Union 952 has been affected by the following violations of the *Rules*: (1) the campaigning by Local Union Business Agents, on Union paid time, for delegates and alternate delegates on the Mireles Slate, the slate headed by Local 952 Secretary-Treasurer Ed J Mireles, (2) the failure of Local 952 to supply him complete and accurate worksite lists, and (3) the refusal of Local 952 to honor his request to distribute campaign material for the Working Teamsters for Ron Carey Slate by utilization of the Local's bulk rate postal permit while simultaneously financing the printing and distribution of the Local 952 Annual Report, which supported the candidacy for delegate and alternate delegate of members of the Mireles Slate. With the exception of the allegation of about Business Agents campaigning on time paid for by the Local Union, all the allegations of *Rules* violations were the subject of previous protests filed by Barclay and deferred by the Election Officer pursuant to his authority under Article XI, § 1 (a)(4)(b) of the *Rules*.<sup>1</sup>

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<sup>1</sup>There is also pending before the Election Officer a protest filed by another member of Local 952, P-230-LU952-CLA. That protest raises issues identical to those raised in

Brian Barclay  
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Local Union 952 made a good faith effort to, and in fact, substantially complied, with Barclay's request to provide the worksite list. The Local represents members working for a multitude of employers. The employers are often small, employing few members of Local 952, and close or reopen operations or change worksites with rapidity and regularity. Local 952 did not fail to comply with its obligations under Article VIII, § 1 of the *Rules* and accordingly, this protest is DENIED.

### III Distribution of Campaign Literature

Barclay alleges that he and his slate were denied access to the membership of Local 952 equal to the access afforded the Mireles Slate, headed by Local Secretary-Treasurer Ed J Mireles. He alleges that the Local denied his request to distribute campaign literature by utilization of the Local's bulk rate postal permit<sup>2</sup> while the Local simultaneously printed and distributed, at Local Union expense, a Local Union publication entitled, "Teamsters Union Local 952 Annual Report," supporting the candidacies of Mireles and his slate. These allegations were the subject of previous protests filed by Barclay, Election Office Case Nos P-207-LU952-CLA and P-223-LU952-CLA, both of which were deferred by the Election Officer pursuant to his authority under Article XI, § 1 (a)(4)(b) of the *Rules*.

These allegations were investigated by Adjunct Coordinator Jan Stigitz. On December 14, 1990, Barclay mailed to Mireles, as Secretary-Treasurer of Local 952, a certified letter requesting to have his campaign literature distributed by the Union utilizing Local 952's bulk rate postal permit. Barclay requested an explanation of the procedures to be used, the costs involved, and all other details necessary to complete his campaign mailing. He also stated that he wanted the campaign literature to be brought to the Post Office for mailing on January 3, 1991<sup>3</sup>.

Mireles responded by letter dated December 19, 1990. The letter notified Barclay of the name and address of the mail house used by Local 952 and informed him of the costs associated with the mail process. Mireles also told Barclay that if he wished to use a bulk mail permit, Barclay would have to purchase such permit from the Post Office at a cost of \$60.00.

Following receipt of this letter, Barclay states that he attempted to reach Mireles to discuss, inter alia, his right to utilize the Local's bulk rate permit for distribution of

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<sup>2</sup>By the terms of his request, Barclay sought utilization of only the bulk rate permit. Local 952 also has non-profit status with respect to such bulk rate permit. Under the *Rules*, Article VIII, § 6 (a)(3), unions are required to honor requests for campaign literature distribution at any lawful class or type of mail or postage including utilization of non-profit organization status. Local 952 has both a bulk rate permit and non-profit status.

<sup>3</sup>The delegate and alternate delegate election in Local 952 was conducted by mail ballot, the ballots were mailed on January 9, 1991.

campaign literature Barclay states that his phone calls were not returned Barclay communicated with the mail house identified in Mireles' December 19, 1990 letter, the mail house informed him, consistent with Mireles' position, that the Local's bulk rate permit would be unavailable for the distribution of his campaign literature.

Mireles informed the Election Officer that he returned Barclay's calls but was unable to reach him Mireles spoke to Regional Coordinator Geraldine L. Leshin about Barclay's request to distribute his campaign literature through utilization of Local 952's bulk rate permit Ms Leshin informed him, consistent with Article VIII, § 6 (a)(3) of the *Rules*, that Local 952 was required to make the permit available to Barclay for the distribution of Barclay's campaign literature.

Local 952 did not permit Barclay to distribute his campaign literature through the utilization of the Local's bulk rate permit Barclay was unable to, and did not, mail campaign literature to Local 952 membership

In December, 1990, Local Union 952 prepared, published and distributed by mail to all members a publication entitled, "Teamsters Union Local 952 Annual Report " The annual report consisted of a sixteen page magazine, printed on glossy paper, includes articles about a variety of Local Union activities, each article accompanied by photographs, including a number of color photographs The annual report was distributed to the membership utilizing Local 952's bulk rate mailing permit

This is the first such Report ever published by Local 952 It was mailed on December 24, 1990 and received by the membership immediately prior to their receipt of the mail ballots Mireles' photograph appears on the cover and on nine of the fourteen pages of the Report Three of those pictures are in color On one page of the report, Mr Mireles is pictured twice Mireles is the author of three articles, his name, along with his remarks, are featured in two other articles

The Annual Report also contains pictures of seven other candidates seeking election as delegates in 1991 International Convention on the Mireles Slate The annual report contains no pictures of any of the members of the Working Teamsters for Ron Carey Slate nor does the report mention any of their names, the same is true for the one independent delegate candidate

The *Rules* provide in Article VIII, § 6(a)(1) that "each candidate shall be permitted a reasonable opportunity, equal to that of any other candidate, to have his/her literature distributed by the Union, at the candidate's expense " (emphasis added) The *Rules* further provide that the Union is to honor requests for distribution of literature by any lawful class or type of mail or postage, including the utilization of the Union's non-profit organization bulk rate permit *Rules*, Article VIII, § 6 (a)(3)

The *Rules* further provide that, "a Union financed publication shall not carry a substantial number of article or pictures featuring a particular candidate, unless all candidates for the same position are given equal treatment, equal space and equal

prominence " *Rules*, Article VIII, § 7 As further explicated in the Advisory on Union Publications, the *Rules* are violated when a Union financed publication includes prominent, particularly cover, photographs of a candidate, numerous photographs of the same candidates accompanying the same article or numerous articles in the same publication about a particular candidate

Here, Local Union 952 financed a new publication featuring Ed J Mireles, a candidate for delegate to the 1991 IBT International Convention, and other members of his slate -- in effect campaign literature on behalf of Mireles' slate -- and distributed such publication to all Local Union members utilizing the Local's non-profit organization bulk rate postal permit while simultaneously denying Barclay an equal opportunity to distribute his campaign literature utilizing such postal permit Barclay was thus unable to distribute by mail any campaign literature to the membership of Local 952, while the Local financed the printing and distribution of a publication which was essentially campaign literature on behalf of Mireles and his slate

The *Rules* were violated in two ways, Barclay was denied the opportunity to distribute his campaign literature while Mireles was able to have what amounted to his campaign literature distributed at the expense of the Local Union The effect of such violations were cumulative, one slate of candidates was permitted to have its campaign literature distributed at no cost while the opposing slate was totally prevented from distributing its literature Prior to voting, the membership of Local 952 had received campaign literature from one slate of candidates -- paid for by Local union funds -- but had received no literature from the opposing slate

The Election Officer concludes that these dual violations, by reason of their cumulative effect, may have affected the outcome of the election for delegates and alternate delegates from Local 952 Thus, pursuant to Article XI, § 1 (b)(2), the Election Officer grants Barclay's protest and directs a new election for delegates and alternate delegates from Local Union 952 No new nominations shall be held and the election shall be conducted and administered in its entirety by the Election Officer *Rules*, Article XI, § 3 The Election Officer, through its Washington office and in conjunction with the Regional Coordinator for Southern California, will notify the Local and all candidates of the date and other details of such rerun election

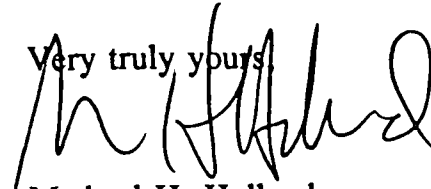
Further, and to remedy the Local's denial of equal access to the membership by delegate and alternate delegate candidates opposing the Mireles Slate both by the Local's refusal to permit such candidates to utilize the Local's non-profit organization bulk rate mailing permit and by the Local's financing the publication and distribution of literature supporting the Mireles Slate, the Election Officer directs Local 952 to distribute campaign literature on behalf of the Working Teamsters for Ron Carey Slate and on behalf of the independent delegate candidate The literature to be distributed shall consist, on behalf of the Working Teamsters for Ron Carey Slate, of a mailing no longer than 3 pages, 8 1/2" x 11" in size, and on behalf of the independent candidate, of a mailing no longer than 1 page, 8 1/2" x 11" in size The literature may contain photographs of the candidates All costs associated with the duplicating and mailing of such literature shall be borne by the Local Union The Local Union may distribute the

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literature through utilization of its non-profit bulk rate mailing permit. The duplication and mailing shall be accomplished within five days, excluding Saturdays, Sundays and holidays, of the date the literature is submitted to the Local Union.

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/mca

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

IN RE:

BRIAN BARCLAY,

Complainant,

and

ED J. MIRELES,  
IBT LOCAL UNION NO. 952,

Respondents.

91 - Elec. App. - 111 (SA)

DECISION OF THE  
INDEPENDENT ADMINISTRATOR

This matter arises out of an appeal from a March 18, 1991, decision of the Election Officer deciding four separate protests.<sup>1</sup> A hearing was held before me on March 21, 1991, at which the following persons attended: Ed Mireles, Secretary-Treasurer of Local 952, and Joseph Kaplon, an attorney representing the Local. Also heard by way of telephone conference were Barbara Hillman and John J. Sullivan, on behalf of the Election Officer; Joan Stiglitz, an Adjunct Regional Coordinator; and the complainant, Brian Barclay.<sup>2</sup>

Mr. Barclay was a candidate for delegate on the "Working Teamsters For Ron Carey" Slate. Mr. Barclay and his Slate lost their election bid to Mr. Mireles and his Slate. Of the approximate 12,000 ballots mailed some 2,000 were cast, and out of

<sup>1</sup> The Election Officer's March 18, 1991, decision decided protests POST9-LU952-CLA, [REDACTED], P-223-LU952-CLA and P-297-LU952-CLA.

<sup>2</sup> Local 952 had offered to pay the cost of Mr. Barclay to attend the hearing in person, but he apparently declined the offer.

that number some 1,900 were counted.<sup>3</sup> The highest vote getter on the Working Teamsters For Ron Carey Slate received 676 votes. The lowest vote getter on the Mireles Slate, received 1,034 votes. Thus, 358 votes (approximately 19 percent) separated the two.

Mr. Barclay filed four protests. One of those protests was docketed by the Election Officer as a "post-election" protest and was treated as such. Rules For The IBT International Union Delegate And Officer Election (the "Election Rules"), Article XI, Section 1.b. The other three, although "pre-election" protests, were treated on a post-election basis pursuant to Article XI, Section 1.a.(4)(b) of the Election Rules.

Article XI, Section 1.b.(2) states that:

Post-election protests shall only be considered and remedied if the alleged violation may have affected the outcome of the election.

This is the standard under which these protests were judged.

The first two protests filed by Mr. Barclay concerned allegations of wrongful campaigning on Union time (Article VIII, section 10.b.) and the Local's failure to provide complete and accurate worksite lists to Mr. Barclay (Article VIII, Section 1.c.). The Election Officer did not find merit to either of these protests. Mr. Barclay offered nothing at the hearing to challenge the Election Officer's ruling. Accordingly, the Election Officer's decision on these two protests are affirmed for the reasons expressed in the Election Officer's decision.

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<sup>3</sup> Local 952 contends the exact number counted was 1,885. The Election Officer states 1,900 were counted.



Of more pressing importance is Mr. Barclay's charge that the Local denied him access to its non-profit bulk rate postage permit for the mailing of Working Teamsters For Ron Carey Slate campaign material. This protest implicates Article VIII, Section 6.a.(3) of the Election Rules which provides in pertinent part:

The Union shall honor requests for distribution of literature by any lawful class or type of mail or postage, including, to the extent permitted by postal regulations, utilization of any non-profit organization bulk-rate permit of the International or Local Union or any other subordinate body of the Union utilized by the Local Union. [Emphasis supplied.]

On December 14, 1990, Mr. Barclay wrote to Mr. Mireles:

I am a candidate for delegate in Local 952. Pursuant to the rules, I intend to have my campaign literature mailed to the members of Local 952.

I want this mailing to go to all members.

I want this mailing to be mailed third class, using the union bulk rate permit.

I want this mailing to be placed into the Post Office on January 3, 1991.

I will provide literature in sufficient quantity, and will need only the mailing labels affixed to it.

I desire this to be done as efficiently and inexpensively as possible. Please inform me immediately [of] the procedures you will use, including times and dates, the costs involved including a break down of the costs, and all other details.

I intend to exercise my right to have observers present.

Please contact me immediately if you have any questions about this request. Thank you.

[Emphasis supplied.]

Mr. Mireles received Mr. Barclay's letter on December 17, 1991. Two days later, on December 19, a letter was sent to Mr. Barclay by Mr. Mireles:

In response to your letter of December 14, 1990, the following is a breakdown of the costs of mailing your campaign literature.

If you want this mailing to be mailed third class, using a bulk rate permit, you will need to purchase a bulk rate permit from the U.S. Post Office at a cost of \$60.00. The bulk mail rate for 3rd class mail is \$.167 per ounce.

The mailing house used by Local 952 is Oxford Augonaut Mailers, 4901 Patata St., Unit 305, Cudahy, CA 90201. The following is a breakdown of costs for their services.

Fold material	\$ 5.00 per 1,000
3rd class sort, tie & bag	17.00 per 1,000
Insert into #10 envelope (one piece)	10.50 per 1,000
Each additional piece	1.00 per 1,000
Delivery to post office	30.00

Local 952 will provide a complete set of labels of all active members for a cost of \$150.00.

If you need any further information, please do not hesitate to contact me.

[Emphasis supplied.]

At the hearing before me, Mr. Mireles' December 19th response was explained as follows. The Local interpreted the Election Rules to require it to make available its non-profit bulk-rate permit only "to the extent permitted by postal regulations." The Local had previously contacted its post office and the Department of Labor and was told that its non-profit permit could not be used for campaign material. Thus, it directed Mr. Barclay to secure his own

bulk-rate permit. The Local's representation concerning its understanding of the postal restrictions is consistent with the distribution of Mireles Slate campaign literature in the past. On two separate occasions, the Mireles Slate mailed campaign literature to the Local membership. On one of those occasions it used a private bulk-rate permit. On the other occasion, it used first-class postage. On both occasions the cost of the mailing, permit and postage were paid for with funds from the Mireles Slate.

In addition, the Local had retained the services of a mailing house as "strongly recommended" by Article VIII, Section 6.h. of the Election Rules. Accordingly, the handling fees outlined in the December 19 letter were the fees of the mailing house.

Following Mr. Mireles' letter of December 19, Mr. Barclay and Mr. Mireles attempted to reach each other by telephone, but were unsuccessful for some days. Eventually, the two men spoke by telephone. Although the exact date of the telephone conversation is in dispute, it is clear that it was shortly after December 19. Mr. Barclay told Mr. Mireles he was troubled by the December 19 letter. Mr. Barclay wanted a clear indication from Mr. Mireles that he would be able to complete his mailing by January 3. Mr. Barclay was concerned with the January 3 date given that the ballots were scheduled to be mailed on or about that same date. Mr. Mireles reiterated his position on the use of the non-profit bulk-rate postage permit. There was also some discussion between the two men regarding the lead-time needed for the Local to prepare the mailing labels. Mr. Mireles alerted Mr. Barclay that he was

operating with a "skeleton" office crew due to the pending Christmas holidays and some absences due to illness. The conversation ended with Mr. Mireles telling Mr. Barclay to call the Election Officer's Regional Coordinator to get a clarification of the Local's obligations regarding the postage permit.

Not having heard from Mr. Barclay, Mr. Mireles contacted the Regional Coordinator's office himself on or about December 28, 1990. Mr. Mireles spoke with a member of the Regional Coordinator's staff and explained to him the dispute with Mr. Barclay. Mr. Mireles was told that Mr. Barclay had not contacted the Regional Coordinator's office. Mr. Mireles indicated that he wanted to cooperate with Mr. Barclay.

Still not having heard from Mr. Barclay, Mr. Mireles again called the Regional Coordinator's office on January 2. Mr. Mireles spoke with another staff person and explained the situation to him. Mr. Mireles asked for guidance. The staff person read the applicable provision of the Election Rules regarding postage permits to Mr. Mireles. The staff person also said he would talk with the Regional Coordinator directly. Mr. Mireles was also told that since Mr. Barclay had not contacted either the Regional Coordinator or Mr. Mireles, Mr. Mireles should not "worry about it at this point."

Not having heard from the Regional Coordinator, Mr. Mireles again called her office on January 3, 1991. This time Mr. Mireles spoke directly with the Coordinator. In his conversation with the Regional Coordinator, Mr. Mireles explained the entire situation as

it had developed up to that point. Mr. Mireles was again told that since Mr. Barclay had not pursued the mailing, he should not "worry about it."

On January 8, 1991, Mr. Mireles received a copy of Mr. Barclay's protest regarding the Local's refusal to allow him to use the Local's postage permit. That protest was dated January 3, 1991. The Election Officer subsequently found that the Local had violated the Election Rules by denying Mr. Barclay access to its non-profit bulk-rate postage permit.

The Local first objects to Mr. Barclay's protest as untimely. The Election Rules provide that "[p]rotests regarding alleged failures to provide proper access to the membership," "must be filed within forty-eight (48) hours or such protests shall be waived." (Emphasis in original.)

The Local suggests that Mr. Barclay was well aware of its position on the use of the postage permit when he received Mr. Mireles' December 19, 1990, letter. The Local further argues that the Local's position was affirmed when Mr. Mireles had his telephone conversation with Mr. Barclay a few days after the Mireles letter was sent. Thus, it is argued that Mr. Barclay's protest should have been filed either: (1) with 48 hours following his receipt of the December 19 letter; or (2) within 48 hours of his telephone conversation with Mr. Mireles. Using either cut-off, it is clear that Mr. Barclay's protest should have been filed before the end of December, 1990.

The Local emphasizes that its reliance on the time restrictions of the Election Rules is more than a technical argument. It states that it was always willing to cooperate with Mr. Barclay as evidenced by Mr. Mireles' continued diligence in keeping in touch with the Regional Coordinator's office. The Local contends that if Mr. Barclay had pursued his request to use the postage permit (or sought a clarification of the Election Rules) with the Regional Coordinator prior to January 3, 1991, the Local would have complied with the Election Officer's directive, thereby avoiding any question of denied access to the membership.

The Election Officer viewed the January 3, 1991, date (the date Barclay wanted to complete his mailing) as the beginning of the 48 hour period to file a protest.

Under the circumstances presented here, I find Mr. Barclay's protest regarding the postage permit to be untimely. As argued by the Local, Mr. Barclay knew shortly after December 19 that the Local was denying him access to its permit. Mr. Barclay did nothing to pursue his request for a mailing. Mr. Barclay cannot set a deadline for a mailing, and then sit idly in the face of the Local's refusal, waiting for the deadline to pass. If Mr. Barclay was genuinely interested in reaching the membership by way of a mailing on January 3, 1991, he had an obligation to file a protest with the Election Officer within 48 hours of his learning of the Local's position. At the very least, he had an obligation to contact the Regional Coordinator to seek guidance. Mr. Mireles told Mr. Barclay as much. In fact, Mr. Mireles repeatedly checked

with the Regional Coordinator to learn if Mr. Barclay had made any inquiries. The Regional Coordinator's office repeatedly told Mr. Mireles not to "worry" given the fact that Mr. Barclay had not pursued matters.

Thus, the Election Officer's ruling regarding the Local's postage permit is reversed based upon a finding that Mr. Barclay's protest was not filed in a timely manner.

The last issue to be addressed centers on a December 24, 1990, distribution by the Local to its members of a publication entitled "Teamster Union Local 952 Annual Report" (the "Annual Report"). The Local distributed the Annual Report using its non-profit, bulk-rate postage permit. The Annual Report was also prepared, published and distributed at the Local's expense. It was printed on glossy paper and featured articles on a variety of Local activities. The Annual Report was also replete with color photographs.

The Annual Report featured Mr. Mireles on the cover, and carried his photograph on nine out of a total of sixteen pages. It also featured Mr. Mireles as the author of three articles. Additionally, his name and remarks appeared in two other articles.

In addition, the publication contained a color photograph of the January 1990 swearing-in of the seven Local incumbent officers, all of whom are members of the slate headed by Mireles.

In contrast, the publication did not feature any articles carrying the names or remarks of the members of the opposing slate

or the individual independent candidate. Nor did the publication carry any photographs of those individuals.

The Annual Report was received by the membership during the period immediately prior to their receipt of the ballots.

As explained in the Election Officer's Summary:

Article VIII, Section 7, which governs Union publications, prohibits the use of any Union-financed publication to support the candidacy of any person. Section 7 expressly prohibits reporting on events that are not newsworthy in order to feature a candidate and "carry[ing] a substantial number of articles or pictures featuring a particular candidate, unless all candidates for the same position are given equal treatment, equal space and equal prominence." Art. VIII, § 7(c) and (d).

In an Advisory on Union Publications, the Election Officer affirmed the prohibition against the use of Union-financed publications to support any candidacy. The Advisory noted specifically as follows:

Featuring the activities of a particular candidate without publicizing the similar or identical activities of other candidates is an example of improper support. Featuring any particular candidate with larger or more attractive pictures without journalistic justification, or with articles or pictures not journalistically significant or with a substantial number of articles or pictures are further examples of improper support.

The Advisory also cautioned that "[p]rominent, particularly cover, photographs of a candidate" would be considered to constitute improper support. So too would "[n]umerous articles in the same edition about a particular candidate." Finally, the Advisory warns that "[p]ictures or articles reporting on the activities of other candidates for the same office(s) have not been similarly reported" will violate the Rules. Advisory at 2-3.

The Election Officer found "that by financing the publication of the December 1990 'Annual Report' the Local Union has . . . violated the prohibitions against use of a Union-financed



publication to promote a particular candidacy." In reaching this conclusion, the Election Officer commented that: "There is no question that the high visibility afforded Mr. Mireles exceeded the bounds permitted by the [Election] Rules."

The Local defended its Annual Report by noting that it was merely a supplement to its regular quarterly reports which are issued under the banner "952 Reporter." The Local suggests that the only difference between the two is that the regularly-issued quarterly report usually runs approximately eight pages and is in black-and-white, whereas the "Annual Report" ran 16 pages and contained color photographs. The Local also defends the timing of the issuance of the Annual Report by explaining that while it intended to issue it sometime in late November, printing and scheduling difficulties caused it to be issued at the end of December. The Local also points out that the picture of the incumbents being sworn in which appeared in the Annual Report also appeared in the "Winter 1990" issue of the "952 Reporter." The only difference being that the Annual Report's picture was in color.

I reject the Local's rationale and affirm the Election Officer's finding. The "Annual Report" was nothing more than a slick piece of campaign literature disguised as an "Annual Report." In reaching this conclusion, I find it especially significant that the Local had never issued an "Annual Report" before. I also find the timing of the Annual Report -- on the heels of the mailing of the ballots -- to be more than coincidental.

Finding a violation of the Election Rules does not end our inquiry. As noted, this is a post-election protest, thus remedial action need only be taken if the violation "may have affected the outcome of the election." The Election Officer's decision provides no guidance since the Election Officer found a violation regarding both the bulk-rate permit and the "Annual Report." The Election Officer determined that both violations "may have affected the outcome of the election" and thus, ordered a re-run election. The Election Officer specifically noted in his Summary that he "express[ed] no opinion on whether either violation, standing alone, would have been sufficient to affect the outcome of the election. It is the combined effect of the violations that is dispositive in this case."

Reviewing the record in light of the single violation of the Election Rules found here, it cannot be said that the issuance of the Annual Report "may have affected the outcome of the election." As noted at the outset, the number of votes separating the highest losing candidate from the lowest winning candidate was significant, representing approximately 19 percent of the counted ballots.<sup>4</sup> In the past, the Independent Administrator has upheld the Election Officer's decision to re-run elections based upon post-election review of election violations where only two votes separated the lowest winner from the highest loser. In Re: China, 91 - Elec.

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<sup>4</sup> The vote count for the alternate delegate was equally disparate. The Mireles Slate won all the alternate delegate spots. The highest losing candidate and the lowest winning candidate were separated by approximately 20 percent of the counted ballots.

5/20/91

BARCLAY  
ELECTION  
PROTEST

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., :  
 :  
 Defendants. :  
 -----X

88 CIV. 4486 (DNE)

IN RE: PETITION FOR REVIEW OF :  
 DECISION 91-ELEC. APP.-111 OF :  
 THE INDEPENDENT ADMINISTRATOR :  
 -----X

EDELSTEIN, District Judge:

WHEREAS petitioner Barclay appeals decision 91-Elec. App.-111 of the Independent Administrator, which reviewed the Election Officer's decisions POST9-LU952-CLA, P-207-LU952-CLA, P-223-LU952-CLA and P-297-LU952-CLA; and

WHEREAS Article XI, §1.a.(1)(b) of the election rules states that pre-election protests regarding "failure to provide proper access to the membership" must be filed within 48 hours; and

WHEREAS the Independent Administrator determined that Barclay's protest regarding access to the Local 905 bulk mailing rate was untimely since it was not made within 48 hours of Local 952's response to Barclay's request for use of the Local 952 postal permit; and

WHEREAS Article XI, §1.(b)(2) of the election rules provides that "[p]ost election protests shall only be considered and remedied if the alleged violation may have affected the outcome of the election; and

WHEREAS the Independent Administrator further determined Local 952's publication of its annual report did not affect the outcome of the Local 952 election, since the lowest winning candidate had approximately 19 percent more votes that the highest losing candidate; and

WHEREAS this Court and the Court of Appeals have ruled that determinations of the Independent Administrator "are entitled to

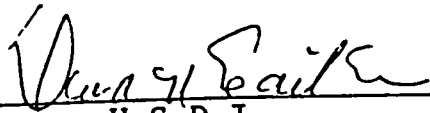
great deference." United States v. International Brotherhood of Teamsters, 905 F.2d 610, 616 (2d Cir., 1990), aff'g March 13, 1990 Opinion & Order, 743 F. Supp. 155 (S.D.N.Y., 1990).

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.-111 of the Independent Administrator is affirmed in all respects.

So Ordered.

Dated: May 20, 1991  
New York, New York

  
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U.S.D.J.