

March 14, 1996

VIA UPS OVERNIGHT

John G. Platt
1480 Cedar Oak
Placerville, CA 95667

Willie Redd
2510 Wittkop Way #25
Sacramento, CA 95825

Cliff Webb, Secretary-Treasurer
Teamsters Local Union 150
7120 East Parkway
Sacramento, CA 95823

Rick Smith
8218 Augusta Way
Sacramento, CA 95828

Marty Crandall
Teamsters Local Union 150
7120 East Parkway
Sacramento, CA 95823

Robert Bonsall
Beeson, Tayer & Bodine
1001 6th Street, Suite 500
Sacramento, CA 95814

David Loman
Teamsters Local Union 150
7120 East Parkway
Sacramento, CA 95823

Everett Parsons
Montgomery Ward
Regional Distribution Center
3689 Industrial Drive
West Sacramento, CA 95691

Re: Election Office Case Nos.

**Post-1-LU150-CSF
P-447-LU150-CSF
P-448-LU150-CSF
P-560-LU150-CSF**

Gentlemen:

This matter involves three pre-election protests deferred by the Election Officer for post-election review and a post-election request for a recount.

John G. Platt, a member of the Teamsters for Carey '96 slate ("Carey slate") of candidates for delegate from Local Union 150, filed two pre-election protests, P-447-LU150-CSF and P-448-LU150-CSF, pursuant to Article XIV, Section 2(b) of the *Rules for the 1995-1996 IBT International Union Delegate and Officer Election ("Rules")*.

In P-447-LU150-CSF, the protester alleges that Montgomery Ward ("Ward's" or "the employer") promulgated a broad policy prohibiting solicitation at its Sacramento, California facility in violation of the preexisting rights of its employees to solicit support for candidates for delegate. The protester alleges that the employer had allowed United Way to solicit contributions from its employees.

In P-448-LU150-CSF, the protester alleges that Local Union Secretary-Treasurer Cliff Webb and Local Union 150 Business Agents Marty Crandall and David Loman, who are also members of the Delegates '96 slate of delegate candidates from Local Union 150, failed to object to the employer's effort to prohibit campaigning by Willie Redd and Rick Smith. Mr. Redd, a member of the Carey slate, and Mr. Smith, a supporter of the slate, attempted to campaign at Ward's on behalf of the Carey slate. The employer took action to enforce its no-solicitation policy against these employees. The protester alleges that the business agents' failure to object to the employer's action constituted participation in the employer's effort to eliminate campaign rights and to retaliate against Mr. Redd and Mr. Smith for the exercise of such rights. The protester further alleges that the participation of the local union officers in the denial of the rights of Mr. Redd and Mr. Smith was done on local union time in violation of the *Rules*. Finally, the protester alleges that these union officers, who were candidates for delegate, benefited from the employer's no-solicitation policy because the policy restricted campaigning by their opponents in the delegate election. The protester contends that the receipt of this benefit was an acceptance of an unlawful employer contribution.

Local Union 150 Secretary-Treasurer Cliff Webb filed a protest docketed as P-560-LU150-CSF against International Vice President Ken Mee, International Vice President Dennis Skelton, and John Platt concerning a meeting held between Mr. Mee, Mr. Skelton and Mr. Platt and members of the local union. Mr. Webb alleged that the International vice presidents and Mr. Platt provided misleading information concerning a protest filed against members of the Delegates '96 slate. Mr. Webb also alleged that by making these statements, Mr. Skelton and Mr. Mee were campaigning during working hours and on union time in violation of Article VIII, Section 11(b) and Article XII, Section 1(b)(4).

The Election Officer deferred P-447-LU150-CSF, P-448-LU150-CSF, and P-560-LU150-CSF for post-election review pursuant to her authority under Article XIV, Section 2(f)(2).

After the ballot count in the Local Union 150 delegate election, Mr. Platt filed Post-1-LU150-CSF, a post-election protest pursuant to Article XIV, Section 3(a) of the *Rules*. In his post-election protest, Mr. Platt requests a recount of the ballots due to the possibility of human error in the ballot count.

Regional Coordinator Matthew D. Ross and Adjunct Regional Coordinator Victoria Chin investigated the protests.

The counting of the ballots for the mail-ballot delegate election at Local Union 150 took place on February 26, 1996. There were 1570 ballots cast, of which 1455 were counted. Two slates competed for the eight delegate positions and three alternate delegate positions. The results of the election for delegate were as follows:

<u>Name</u>	<u>Slate/Independent</u>	<u>Number of Votes</u>
James R. Dyer	Carey slate	707
Jim Tobin	Delegates '96 slate	699
Cliff Webb	Delegates '96 slate	683
Marvin Stroud	Carey slate	681
Tom Cota	Carey slate	680
John Conley	Carey slate	678
Mary Ann Wade	Delegates '96 slate	674
Jim Baumgartner	Carey slate	672
John G. Platt	Carey slate	663
Willie Redd	Carey slate	659
Elliott C. Darden, Jr.	Carey slate	646
Marty Crandall	Delegates '96 slate	643
John Hass	Delegates '96 slate	615
Christopher D. Folkman	Delegates '96 slate	613
Dave Lowman	Delegates '96 slate	602
Alan W. Daurie	Delegates '96 slate	552
Cari P. Perras	Independent	151

The results of the election for alternate delegate were as follows:

Steve Ryan	Carey slate	741
Jake Workman	Carey slate	739
Michael Tobin	Delegates '96 slate	684
Bob Ream	Carey slate	628
Perry Hogan	Delegates '96 slate	602
Lee Garner	Delegates '96 slate	581

I. The Protests Involving Access to Employer Premises: P-447-LU150-CSF/
P-448-LU150- CSF

By letter dated January 23, 1996, Ward's wrote to Local Union 150 Secretary-Treasurer Cliff Webb advising that the employer has a "strict policy regarding solicitation on company premises during company time" and that Willie Redd and Rich Smith, two of its employees, were "actively involved in this process." The employer wrote that it sought the assistance of the union in "eliminating this practice," and advised that participation in "local election business" could lead to the termination of the two employees. Ward's issued a broad no-solicitation policy by notice dated January 24, 1996 which it distributed to employees along with their paychecks received during the week ending January 25, 1996.

Article VIII, Section 11(d) of the **Rules** provides that no restrictions shall be placed on the preexisting rights of members to utilize and have access to employer premises for campaign purposes and campaign activities. In Teller, Case No. P-062-LU741-PNW (February 7, 1991), aff'd, 91 - Elec. App. - 92 (SA) (March 12, 1991), the Election Officer wrote:

Among the preexisting rights referenced in [Article VIII, Section 11(d)] are those rights available under the National Labor Relations Act and the Labor Management Relations and Disclosure Act.

Thus, all IBT members have the right to campaign, talk to fellow members, hand out literature, circulate petitions, and post material in non-work areas of the employer's premises during non-work time. It is unlawful under the NLRA and therefore a violation of the **Rules** for either the Employer or the Union to prohibit Union members from exercising their campaign rights. [citations omitted].

Article VIII, Section 11(b) reads, in pertinent part:

All Union officers and employees, if members, retain the right to participate in campaign activities, including the right to run for office, to openly support or oppose any candidate, to aid or campaign for any candidate, and to make personal campaign contributions.

Further, campaigning during paid vacation, paid lunch hours or breaks, or similar paid time off is also not violative of this section.

After discussion with the Election Officer's representative, Ward's has assured the Election Officer that its employees are permitted to campaign in non-work areas on non-work time. Additionally, Mr. Webb and Mr. Crandall, on behalf of the union, have advised the employer that the local union will "vigorously represent" its members to enforce their right to exercise in political activities, as protected by the *Rules*.

Under these circumstances, the Election Officer would normally conclude these protests are resolved.

However, these protests are being considered in a post-election context. The issue which must then be addressed, pursuant to Article XIV, Section 3(b) of the *Rules*, is whether any conduct giving rise to a violation of the *Rules* may have affected the outcome of the election. With regard to P-447-LU150-CSF, the protester was not advised prior to the election that Ward's had agreed to permit access to its workforce consistent with the *Rules*. Thus, the employer's broad no-solicitation policy was in effect prior to the election. Because the policy did not permit campaigning in non-work areas during non-work time, the policy was in violation of the *Rules*. Teller, supra.

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 Union, Operating Engineers, 366 F.2d 438 (2nd Cir. 1966). To determine whether an effect exists, the Election Officer determines mathematically whether the effect was sufficient in scope to affect the outcome of the election and/or whether there was 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).

There are approximately 105 members of Local Union 150 employed at Ward's. There was a nine-vote differential between the winning delegate candidate with the least number of votes, Jim Baumgartner, and the losing delegate candidate with the highest number of votes, John G. Platt. Given the nine-vote margin of victory, the Election Officer notes that it is mathematically possible

that votes cast by Ward's voters could have affected the outcome of the election. This observation holds even if the number of Ward's voters is calculated at the 25% rate of return of ballots for Local Union 150, which is computed by dividing the number of ballots cast, here 1570, by the number of ballots returned, which was 6388. Under this calculation, the estimated number of Ward's votes is approximately 25 votes, a number exceeding the margin of victory here. Nevertheless, the Election Officer finds that for the reasons set forth below, it is not reasonably probable that the violation by the employer affected the outcome of the election.

Mr. Smith and Mr. Redd were the only employees attempting to campaign at Ward's, and both sought to distribute literature promoting the Carey slate, of which Mr. Redd was a member. Despite the employer's attempts to limit solicitation, Mr. Smith and Mr. Redd advise that they were able to distribute literature on behalf of the Carey slate. Prior to receiving a copy of the employer's no-solicitation policy on January 25, Mr. Smith distributed literature personally on his shift, which is the graveyard shift, and left three different pieces of literature promoting the Carey slate in the break room for all three shifts to read. Mr. Smith advises that he replenished the supply of literature several times and therefore, the leaflets remained in the break room for about a week before January 25. Thus, the Carey slate was able to distribute its literature at Ward's for one week prior to February 2, the date on which ballots were mailed to the Local Union 150 membership. Additionally, Mr. Platt reports that the Carey slate did one mailing of campaign literature to the Local Union 150 membership.

Accordingly, the evidence reflects that the Carey slate did have timely access to the Ward's employees. There is no evidence that any other candidate or the other slate obtained any greater access to the Ward's employees than obtained by the Carey slate. Thus, there is no candidate who received an undue advantage as a result of the employer's attempt to enforce its no-solicitation policy against Mr. Smith and Mr. Redd. Also, the Election Officer notes that five out of the eight delegates and two out of three of the alternate delegates who were elected were members of the Carey slate. Accordingly, the Election Officer finds that it is not reasonably probable that the attempt to ban solicitation at Ward's affected the outcome of the Local Union 150 delegate election. See Naslanic, P-195-LU243-MGN (May 2, 1991); Schweitzer, Post-58-LU896-CLA (May 1, 1991); Rodriguez, Post-59-LU630-CLA (May 22, 1991); Cox, Post-47-LU771-PHIL (April 19, 1991) (finding employer's failure to permit access to premises for campaigning did not affect outcome of election).

Having found that the attempted denial of access did not affect the outcome of the election, the Election Officer also finds that any alleged participation by the union officers in the enforcement of the no-solicitation policy was similarly without effect on the election.

P-447-LU150-CSF and P-448-LU150-CSF concerning access are DENIED.

II. The Protest Concerning "Misleading Information" and Campaigning on Union Time-- P-560-LU150-CSF

The protester alleged that International Vice President Mee, International Vice President Skelton, and Mr. Platt had met with several members of Local Union 150 in the lunch room of the Roadway facility in West Sacramento, California on or about February 23, 1996. The protester asserted that during the course of the meeting, Mr. Mee, Mr. Skelton and Mr. Platt told the members that "extremely grave charges" had been filed against Mr. Webb, Mr. Crandall and Mr. Lowman, members of the Delegates '96 slate. The protester also complained that the IBT representatives and Mr. Platt stated that Mr. Webb, Mr. Crandall and Mr. Lowman had engaged in "serious misconduct" under the *Rules* and that the Election Officer had suspended them for their misconduct.

The protester provided the Adjunct Regional Coordinator with the names of three witnesses to the statements made at the February 23 meeting, each of whom she interviewed. Two of the witnesses denied that they were present at the meeting. The third witness, who was present at the meeting, stated that Mr. Platt was not there, that no campaigning occurred at the meeting and that the statements specifically alleged by the protester were not made, and no mention at all was made of any charges. The witness states that the meeting was about concerns of the Roadway employees and recent developments in the freight industry.

The Election Appeals Master has stated that the protester bears the initial burden of proof to offer evidence substantiating his allegations. In re: Chentnik, 95 - Elec. App. - 52 (KC) (January 10, 1996). In the absence of any such evidence, P-560-LU150-CSF, concerning allegedly misleading information and campaigning on union time, is DENIED.

III. The Request for a Recount

In Post-1-LU150-CSF, Mr. Platt requests a recount of ballots in the Local Union 150 delegate election. The margin of difference between the lowest ranking, tentatively successful delegate candidate was nine votes from the highest ranking, tentatively unsuccessful delegate candidate. Mr. Platt does not seek to review again a determination made by the Election Officer on void ballots, voter eligibility determinations based upon challenges made at the time of the vote count, or concerning any conduct of any candidate or candidate observers. He simply seeks to recount the ballots to determine whether or not any "human error" may have occurred.

Given the closeness of the vote, and after consultation with the Adjunct Regional Coordinator, who directed the counting of the ballots, the request under these circumstances is not unreasonable, and shall be GRANTED.

John G. Platt & Cliff Webb
March 14, 1996
Page 8

The recount shall take place on March 19, 1996 at 10:00 a.m. at Local Union 150 or at such other date that is feasible for Adjunct Regional Coordinator Chin and the other Election Officer representatives needed to conduct the recount.

Any interested party not satisfied with this determination may request a hearing before the Election Appeals Master within one day of 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:

Kenneth Conboy, Esq.
Latham & Watkins
885 Third Avenue, Suite 1000
New York, NY 10022
Fax (212) 751-4864

Copies of the request for hearing must be served on the parties listed above as well as upon the Election Officer, 400 North Capitol Street, Suite 855, Washington, D.C. 20001, Facsimile (202) 624-3525. A copy of the protest must accompany the request for a hearing.

Sincerely,

Barbara Zack Quindel
Election Officer

cc: Kenneth Conboy, Election Appeals Master
Matthew D. Ross, Regional Coordinator
Victoria Chin, Adjunct Regional Coordinator