



OFFICE OF THE ELECTION OFFICER  
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
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Election Officer

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May 1, 1991

**VIA UPS OVERNIGHT**

Donald Stone  
170 W Gates  
Rome, MI 48065

George Vitale  
President  
IBT Local Union 283  
1625 Fort St.  
Wyandotte, MI 48192

Re: Election Office Case No. Post12-LU283-MGN

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 Mr Donald Stone, a member of the Working Teamsters Rank and File Slate. He alleged that he and his slate, as well as the membership of Local 283, have been deprived of a fair and democratic election.

The balloting in Local 283 was by mail. The ballots were mailed to the membership on or about ~~January 10, 1991~~. The membership of Local 283 was entitled to elect three delegates and two alternates in this election. Mr Stone headed the Working Teamsters Rank and File Slate against the slate led by Mr George Vitale, the President of Local 283, the Vitale Unity Team Slate. The election results for Local 283 were as follows:

<u>Delegate Candidates</u>	<u>No. of Votes</u>
Phil Ferretti (Vitale Unity Team Slate)	513
Aaron Gulley (Vitale Unity Team Slate)	510
George Vitale (Vitale Unity Team Slate)	492
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Don Stone (Working Teamsters Rank and File Slate)	423
Linda Innis (Working Teamsters Rank and File Slate)	414
Loretta Rice (Working Teamsters Rank and File Slate)	400

Alternate Delegate Candidates

Anita Peek (Vitale Unity Team Slate)	523
Walter Quillico (Vitale Unity Team Slate)	493
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Dave Shaw (Working Teamsters Rank and File Slate)	398
Roosevelt Caldwell (Working Teamsters Rank and File Slate)	382

Thus, the margin between Mr Stone and the candidate winning a delegate position with the lowest number of votes, Mr Vitale, was 69 votes, and the margin in the alternate delegate race was 95 votes

The bases for Mr Stone's post election protest, and his request for a rerun election, are the eligibility decisions rendered by the Independent Administrator in the matter of Donald Stone, et al. and IBT Local Union 283, 91-Elec App -38, (January 16, 1991), modified 91-Elec App 38, Supplemental Decision (February 1, 1991).<sup>1</sup> The original decision of the Independent Administrator found that Mr Stone was ineligible to run for the position of delegate to the 1991 IBT International Union Convention. News of this decision was disseminated among the membership of Local Union 283. However, Mr Stone immediately announced that he would appeal such ruling and that information was also disseminated among the membership of Local Union 283. A newspaper of general circulation in the Detroit area, The Detroit News, carried an article so stating, the headline of the article read "Dissident Teamster will appeal ruling". Mr Stone's request for reconsideration was successful and the Independent Administrator modified his earlier decision and held Mr Stone eligible to seek a delegate position.

This protest is a post-election protest. Article XI, § 1(b)(2) of the *Rules* provides that, "Post-election protests shall only be considered and remedied if the alleged violation may have affected the outcome of the election." For a violation to have affected the results of the election, there must be a meaningful relationship between the violation and the results of the election. See Wirtz v Local Unions 410, 410(A), 410(B) & 410(C).

<sup>1</sup>In one of his submissions in support of his post election protest, but not part of the post election protest itself, Mr Stone suggests that denial of access to the interior of the compound of Heublein Inc, an employer of members of Local Union 283, on January 25, 1991, may have impacted upon the election results. See Election Officer Case No P-402-LU283-MGN. As Mr Stone admits himself, however, in his protest in Election Officer Case No P-402-LU283-MGN, he had continual and continuous access to the Heublein Inc compound for campaigning purposes prior to January 25, 1991. The first time he was denied such access was on January 25, 1991; the access issue was resolved shortly thereafter. Ballots for this election were mailed on January 10, 1991 and the ballots were counted on January 31, 1991. The lack of access occurred only for a few days at the end of the voting period. Given the access that Mr Stone acknowledges that he had prior to January 25, 1991, the Election Officer concludes that there was no impact on the election results.

International Union of Operating Engineers, 366 F 2d 438 (2nd Cir 1966). A causal connection must be demonstrated between the alleged violation and the outcome of the election sufficient to demonstrate the probability that "but for" the alleged violation, the results of the election would have been different. Dole v. Mailhandlers, Local 317, 132 LRRM 2299 (M D Alabama 1989). For the reasons set forth below, the Elections Officer concludes that no causal connection has been demonstrated in this matter between the decision of the Independent Administrator, later reversed, on Mr. Stone's eligibility and the outcome of the election for Local Union 283.

The argument advanced on behalf of Mr Stone is that members of Local Union 283, believing Mr Stone ineligible to serve as a 1991 IBT International Union Convention delegate, did not vote for him solely for that reason, they did not want to "throw away" their votes. The Election Officer investigation found, however, that the facts do not support this conclusion. ~~First, as indicated above, while the initial decision of the Independent Administrator was disseminated among the membership of Local Union 283, Mr. Stone's determination to appeal that decision was just as widely disseminated. Thus the members of Local Union 283 were aware that the initial decision of the Independent Administrator might be reversed.~~

More important, however, is the fact that Mr. Stone was the top vote getter on his slate. Thus members of Local Union 283 voted for Mr. Stone even where they did not vote for the other members of his slate, refuting the contention that the alleged confusion regarding Mr. Stone's eligibility undercut the appeal of his candidacy. Almost 20% of the votes cast for Mr Stone were votes cast by Local Union 283 members who specifically selected Mr Stone on the ballot, almost 20% of his votes were not the result of Local 283 members voting for his slate. The winning candidates received a far larger portion of their votes by reason of a Local 283 member casting a slate vote. About only 10% of the votes cast for Mr Vitale, the winning candidate with the lowest number of votes, resulted from non-slate voting. Less than 15% of the votes obtained by Mr Gully, the delegate candidate with the highest number of votes, were the result of non-slate voting. (2)

Nor can it be maintained that members of Local Union 283 failed to vote because of the Independent Administrator's decision regarding Mr Stone's eligibility. 2,802 ballots were mailed. 1,020 ballots were returned. The election day eligibility roster indicates that on the day of the count, there were approximately 2,500 members of Local 283 who were eligible to vote. Thus the rate of return for Local 283 was over 40%. Such rate of return is higher than the rate of return for comparably sized local unions whose contested delegate and alternate delegate elections have been supervised by the Election Officer. (3)

That it is improbable that the Independent Administrator's decision with respect to Mr Stone's eligibility affected the results of this election is further demonstrated with reference to the Independent Administrator's eligibility decision concerning George Vitale, a winning delegate candidate. On December 18, 1990, two (2) days after Local 283's nominations meeting, the Independent Administrator, ruling on charges brought

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Donald Stone  
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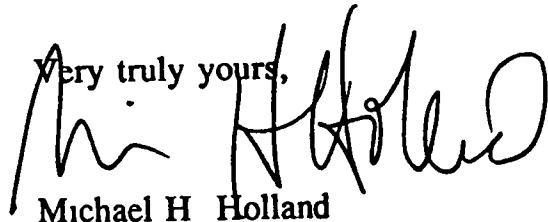
by the Investigations Officer, imposed a period of a five-year suspension on Mr. Vitale. Investigations Officer v. George Vitale, Decision of the Independent Administrator, (December 18, 1990) This decision, if affirmed by the United States District Court for the Southern District of New York, would render Mr. Vitale ineligible to serve as a delegate to the 1991 IBT International Union Convention.

The decision of the Independent Administrator was rendered at the inception of the campaign, two days after the nominations meeting and prior to the date the ballots were mailed, and remains in effect to this date. The decision of the Independent Administrator was widely disseminated among the membership of Local 283. Both the Detroit News and The Detroit Free Press carried articles about his suspension. The campaign literature reproduced, circulated and mailed to each member of Local 283 by Mr. Stone's slate highlighted the Independent Administrator's decision, stating inter alia "don't throw your vote away . . . he [George Vitale] cannot serve as a delegate." Nonetheless, Mr. Vitale garnered sufficient votes to be one of the winning delegate candidates.

Under these circumstances the Election Officer cannot conclude that a meaningful relationship, a causal connection, existed between the Independent Administrator's decision with respect to Mr Stone's eligibility and the outcome of this election. Therefore, in accordance with the decisions in Wirtz v. Local Unions 410, 410A, 410B & 410C, International Union of Operating Engineers, 366 F 2d 438 (2nd Cir. 1966) and Dole v. Mailhandlers, Local 317, 132 LRRM 2299 (M D Alabama 1989), the Election Officer denies this post election protest

If any interested party is not satisfied with this determination, they may request a hearing before the Independent Administrator within twenty-four (24) hours of their receipt of this letter. The parties are reminded that, absent extraordinary circumstances, no party may rely upon evidence that was not presented to the Office of the Election Officer in any such appeal. Requests for a hearing shall be made in writing, and shall be served on Independent Administrator Frederick B Lacey at LeBoeuf, Lamb, Leiby & MacRae, One Gateway Center, Newark, New Jersey 07102-5311, Facsimile (201) 622-6693. Copies of the request for hearing must be served on the parties listed above, as well as upon the Election Officer, IBT, 25 Louisiana Avenue, N W , Washington, D C 20001, Facsimile (202) 624-8792. A copy of the protest must accompany the request for a hearing.

Very truly yours,



Michael H Holland

MHH/mjv

cc. Frederick B Lacey, Independent Administrator

Donald Stone  
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James De Haan, Regional Coordinator

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IN RE

DONALD STONE, et al.

and

GEORGE VITALE and  
IBT LOCAL UNION NO. 283

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91 - Elec. App. - 146 (SA)

DECISION OF THE  
INDEPENDENT  
ADMINISTRATOR

This matter arises out of an appeal from a Decision of the Election Officer in Case No. Post-12-LU283-MGN. A hearing was held before me by way of telephone conference on May 7, 1991, at which the following persons were heard: Barbara Harvey, an attorney on behalf of the complainant, Donald Stone; James Hoffa, representing Local 283; James DeHaan, the Regional Coordinator; and John J. Sullivan, on behalf of the Election Officer. George Vitale and Donald Stone audited the hearing.

Local 283 held its election for three delegates and two alternate delegates to the 1991 IBT International Convention by mail-ballot. On January 31, 1991, the ballots were counted.

George Vitale is the incumbent President of Local 283 and was a candidate for delegate heading the "Vitale Unity Team" slate. By decision dated December 18, 1990, the Independent Administrator suspended Vitale from his office for a period of five years as a result of charges brought by the Investigations Officer, Charles

Carberry. The Independent Administrator voluntarily stayed Vitale's suspension pending review by United States District Judge David N. Edelstein of the December 18, 1990, Decision. Judge Edelstein has yet to rule, and Vitale remains in office pending Judge Edelstein's decision. If Vitale's suspension is upheld by Judge Edelstein, Vitale will be ineligible to serve as a delegate to the Convention.

On January 16, 1991, the Independent Administrator issued a ruling in 91 - Elec. App. - 138 (SA) (January 16, 1991), finding Mr. Stone ineligible to run for delegate. That decision was issued six days after the final set of ballots was mailed to Local 283 members. On February 1, 1991, on a Motion For Reconsideration, the Independent Administrator revised his earlier ruling and found Mr. Stone eligible to run for delegate. Accordingly, the ballots cast for Mr. Stone were allowed to stand.

As explained by the Election Officer in his Summary:

The election, as the following tally shows, was won by the three candidates of the Vitale Unity Team slate:

<u>CANDIDATE</u>	<u>SLATE</u>	<u>VOTES</u>
Phil Ferretti	Vitale Unity Team	513
Aaron Gulley	Vitale Unity Team	510
George Vitale	Vitale Unity Team	492
Don Stone	Working Teamsters Rank & File	423
Linda Innis	Working Teamsters Rank & File	414
Loretta Rice	Working Teamsters Rank & File	400

As can be seen, the margin of victory between Mr. Vitale (the elected delegate with the fewest number of votes at 492 votes) and Mr. Stone (the losing candidate with the most votes at 423 votes) was 69 votes.

In their post-election protest, Mr. Stone and the fellow members of his slate, contended that the Independent



Administrator's earlier ruling that Mr. Stone was not eligible to run as a delegate may have affected the outcome of the election by: (1) causing voters to vote for other candidates rather than "throwing their vote away" on an ineligible candidate; and (2) deterring voters who wanted to elect Mr. Stone from voting at all. The complainants also alleged that the Independent Administrator's decision suspending Vitale from office may also have affected the outcome of the election.

Article XI, Section 1.b.(2) of the Rules For The IBT International Union Delegate And Officer Election (the "Election Rules") provides that:

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

The Election Officer denied the post-election protest. In denying the protest, the Election Officer, as explained in his Summary, "was unable to discern the necessary relationship between the determinations at issue and the outcome of the election." The Election Officer relied on the following factors in reaching this conclusion:

1. While the initial decision of the Independent Administrator regarding Stone's eligibility was disseminated among the membership of Local 283, Mr. Stone's determination to appeal that decision was just as widely disseminated. Thus, the members of Local 283 were aware that the initial decision of the Independent Administrator might be reversed;
2. Mr. Stone was the top vote-getter on his slate. Thus, members of Local 283 voted for Mr. Stone even where they did not vote for the other members of his slate, refuting the contention that the alleged

confusion regarding Mr. Stone's eligibility undercut his campaign<sup>1</sup>;

3. The rate of ballot return for Local 283 was over 40 percent. According to the Election Officer, such a rate of return is higher than the rate of return for comparably-sized Local Unions whose contested delegate and alternate delegate election had been supervised by the Election Officer. Thus, there is little support that Local 283 members failed to vote because of confusion regarding Mr. Stone's eligibility;
4. Despite the pendency of the Independent Administrator's decision regarding Vitale's five-year suspension from the IBT, which decision was widely publicized in the Detroit Press and made an issue in Mr. Stone's slate's campaign literature, Mr. Vitale garnered sufficient votes to be one of the winning delegate candidates. It is noted, however, that Mr. Vitale was the lowest vote-getter on his slate.

The complainant's chief argument is that the Election Officer failed to abide by established law governing the disposition of such post-election challenges. Stone argued that the settled rule:

[T]hat governs this post-election protest is that once an election violation is proved, the burden of proof shifts to the Local Union to prove that the violation did not affect the outcome. If the Union fails to sustain its burden, the violation is presumed to have affected the outcome of the election in the absence of evidence to the contrary . . . .

The Election Officer did not apply this settled rule. Rather, he required the protestors to prove that "but for" the violation, the outcome of the election would have been different.

[Memorandum Of Law In Support Of Request For A Rerun Election, at p. 2.]

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<sup>1</sup> The Election Officer emphasizes that almost 20 percent of the votes cast for Mr. Stone were not the result of Local 283 members voting for his slate. In other words, 20 percent of Local 283 members who voted in the election made a specific choice to vote for Mr. Stone. By comparison, Mr. Vitale garnered only 10 percent of the members' votes on an individual basis.

The complainants have mischaracterized the Election Officer's analysis and have misstated the standard governing the disposition of post-election protests under the Election Rules.

The Supreme Court in Wirtz v. Hotel, Motel and Club Employees Union, Local 6, 391 U.S. 492 (1968) (the case relied upon by Stone to establish the standard concerning shifting the burden of proof), provides that proof of an election violation establishes a prima facie case that the violation "may have affected" the outcome of the election. Local 6, supra, 391 U.S. at 507. The Local 6 Court goes on to caution, however, that:

This effect may, of course, be met by evidence which supports a finding that the violation did not affect the result.

[Ibid.]

This is exactly the analysis performed by the Election Officer here. The Election Officer pointed to the Independent Administrator's initial determination finding Stone ineligible as the "alleged violation."<sup>2</sup> The Election Officer did not require the complainants to prove that "but for" the alleged violation, the outcome of the election would have been different. Rather, the Election Officer, examining the totality of the circumstances, found sufficient evidence to support a finding that the alleged violation did not affect the result of the election.

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<sup>2</sup> It is unclear whether or not the Independent Administrator's initial decision finding Stone ineligible somehow violated Stone's rights under the Election Rules. I need not rule on that issue, however, to resolve this appeal. For purposes of this appeal, I have assumed that complainants satisfied their prima facie burden of showing a violation.

It is clearly proper for the Election Officer to evaluate the evidence and make such determinations in this type of supervised election.

As stated in Donovan, supra, 515 F.Supp. at 1285-1286:

The situation is vastly different, however, where the Secretary seeks to have an election in which he played a supervisory role set aside. Such an election is conducted under the guidance of an election supervisor, and that supervisor is afforded a wide range of discretion in discharging his supervisory responsibility.

Consistent with Donovan, the "election supervisor" (here the Election Officer) must satisfy himself that there is a probable connection between the alleged violation and the outcome of the election before setting aside the election results. As noted in In Re: Petroff, 91 - Elec. App. - 116 (SA) (April 1, 1991):

Naturally, in determining whether any violation "may have affected the outcome of an election," a certain amount of speculation must be exercised. In this connection, the expertise of the Election Officer is entitled to some weight that will vary with the circumstances.

There is no reason to doubt the Election Officer's expert determination that there was no connection between the alleged violation and the outcome of the election. That determination is sustained by the evidence gathered by the Election Officer. See pp. 3-4, supra.

Although not specifically relied upon by the Election Officer, I also find it significant that Mr. Stone lost to Mr. Vitale by a similar margin in a March 1990 election in a Local Union Officer election. The result of that election was certified by the United States Department of Labor. In that election, Vitale defeated

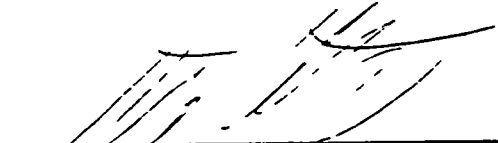
Stone by 55 votes. Here, Vitale defeated Stone by 69 votes. See, e.g., In Re: Braxton, 91 - Elec. App. - 139 (SA) (April 30, 1991). In Braxton, Mr Braxton was defeated in his bid for a delegate slot. In a post-election protest, Mr. Braxton alleged that members of his Local may have been deterred from voting for him after he was discharged because they may have feared that he had no future in the Local. In finding no merit to Mr. Braxton's claim, the Independent Administrator observed:

In November 1989, however, prior to his discharge, Mr. Braxton was defeated in his run for the office of President of the Local by a vote of 198 to 49. Mr. Braxton's showing in that election (49 votes) is comparable to a showing in the delegate election (43 votes).

See also In Re: DelPizzo, 91 - Elec. App. - 134 (SA) (April 25, 1991). In DelPizzo, the Independent Administrator affirmed the Election Officer's denial of a post-election protest finding that the improper use of a Union-financed magazine for campaign purposes did not affect the outcome of the election. In making that determination, the Independent Administrator noted that:

I find it particularly compelling that the election results of the 1989 Presidential election and of the Delegate election were virtually identical.

Accordingly, the Election Officer's denial of this post-election protest is affirmed.

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

Dated: May 9, 1991