



OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS

25 Louisiana Avenue, NW
Washington, DC 20001
(202) 624-8778
1-800-328-6494
Fax (202) 624-8793

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

Michael H Holland
Election Officer

February 12, 1991

VIA UPS OVERNIGHT

Patrick A. Naccarato
1925 E. 5th
Olympia, WA 98501

Owen Linch
9925 Lookout Drive, N.W.
Olympia, WA 98502

Charles A. Lindberg
6623 Fairview, S.W.
Olympia, WA 98502

Leo B. Sweeney
Secretary-Treasurer
119½ Capitol Way
Olympia, Washington 98501

Jim Norbeck
1812 Oxbow Street, N.E.
Olympia, WA 98506

Re: Election Office Case No. Post17-LU378-PNW

Gentlemen:

A timely post-election protest was filed by Patrick A Naccarato, a member of Local Union 378, pursuant to Article XI, Section 1(b) of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*"). The protest alleges the following improper conduct concerning the election procedures:

1. some members who had requested absentee ballots received two ballots and were given a longer period of time to return the ballots than originally set forth in the notice;
2. some members who voted in person, had their ballots placed in a cardboard box, rather than in the official ballot box; and
3. one of the observers for candidate Jim Norbeck campaigned in front of the entrance to the polling place.

Pursuant to Article XI, Section 1(b)(2) of the *Rules*, post-election protests shall only be considered and remedied, if the alleged violation may have affected the outcome of the election. This *Rule* parallels decisions of the Department of Labor and the courts, rendered under the Labor Management Reporting and Disclosure Act ("*LMRDA*") where violations of the LMRDA are alleged to have occurred during Union elections.

In deciding these issues, the courts first determine whether a violation of the statute exists and then, if so, whether there is a reasonable probability that the election may have been affected by the violation. Wirtz v. Operating Engineers, 366 F.2d 438 (2nd Cir. 1966). A finding of a violation suggests an effect upon the outcome of an election. However, the presumption may be rebutted by demonstrating either a lack of an inference of causal connection between the violation and the results of the election or by a mathematical showing that the effect of the violation was insufficient in scope to affect the outcome of the election. Dole v. Mail Handlers, Local 317, 132 L.R.R.M. 2299 (D.C.M.D., Alabama, 1989). Based on these principles, the Election Officer has conducted an investigation of this protest.

I. Absentee Ballots.

The Regional Coordinator received sixty-six requests for absentee ballots prior to January 25, 1991, which were responded to by mailing of absentee ballots on various dates between January 18, 1991 through January 24, 1991. On January 25, 1991, the Office of the Regional Coordinator was advised by the Post Office that some ballot packages were not forwarded by the Post Office, due to a postage problem. On that same date, a new ballot was mailed to all of the sixty-six members who had previously requested absentee ballots accompanied by a notice advising said absentee voters of the problem, and the determination of the Election Officer to delay counting the ballots if the number of absentee voters was sufficient to affect the outcome of the election. In addition, seven new requests for absentee ballots were received by the Regional Coordinator on January 25, 1991 and these requests were responded to by the mailing of ballots on that date.

The ballots not mailed by the Post Office were retrieved by the Regional Coordinator on January 28, 1991. Only twenty-one of the sixty-six absentee ballots requested prior to January 25, 1991 had been held by the Post Office and not mailed to the requesting member; thus, forty-five of the absentee ballots in the original mailing had been properly mailed. Also on January 28, 1991, at approximately 12:00 noon, thirty-six returned absentee ballots were collected from the Post Office. Three of those ballots were ballots which had been distributed through the remailing that occurred on January 25, 1991 and the remaining thirty-three were from the original mailings. Therefore, at most, the number of absentee ballots not received by 12:00 on January 25, 1991, due to the postage problem and the failure of the Post Office to properly mail, was eighteen, the twenty-one found to have been mailed by the Post Office, less the three absentee ballots from the remailing of January 25, 1991, which were voted and collected.

The tally of all ballots cast took place on January 28, 1991 and the results were as follows:

Candidates for Delegate

J. Norbeck	168
L. Sweeney	117
	51

Candidates for Alternate Delegate

Owen Linch	153
Chuck Lindberg	125
	28

Thus, the eighteen absentee votes, which may not have been returned due to the postal problems would not have affected the outcome of the election. The tally was not delayed nor were any additional ballots counted subsequent to January 28, 1991. Accordingly, pursuant to the *Rules* and the case law set forth above, the absentee ballot problem and/or the actions taken with regard to the absentee ballot did not affect the outcome of the election, even assuming that there had been a violation of the *Rules*.

II. Use of Unofficial Ballot Box.

The Regional Coordinator present at the election has advised that the election began at approximately 7.00 a m on January 28, 1991. Five voters were present at that time to cast their ballots; however, the ballot box which was to be principally used for the collection of voted ballots was not available for use at that time. The five early voters, therefore, placed their ballots in a cardboard box which had been set up by an Adjunct Regional Coordinator, and which was under the observation of the Adjunct and the Regional Coordinator at all times. Once the principal (and aluminum) ballot box was prepared, the Regional Coordinator and her Adjunct transferred the five ballots which had been cast into the aluminum box.

Pursuant to Article VII, Section 1(c) of the *Rules*, the original cardboard box into which the first five voters placed their ballots is not a violation of the *Rules*. Technically under the *Rules*, the proper procedure once the aluminum box was set up would have been to seal the first box, at the time of the count, both boxes would then be opened. However, there is no allegation or evidence that any tampering, alteration or compromise of the secrecy of the ballot occurred as a result of the transfer of the ballots. Further, the fact that five ballots were transferred to the second box does not affect the outcome of the election, the smallest margin being twenty-eight votes, as described in the above section of this determination. Therefore, any violation of the *Rules* in connection with the ballot boxes does not affect the outcome of the election.

III. Observer Campaigning.

The only designated observer present at the polling place was Doug Morgan, an observer for delegate candidate Jim Norbeck. The complainant has advised that he observed Mr. Morgan talking to members outside the building where the voting was taking place sometime after 5 00 p m, but before 8:00 p m. He did not hear any portion of the conversation of Mr. Morgan. Mr. Morgan has advised that he did speak to some members outside the building, which contained the polling place on the third floor, and passed out approximately ten pieces of literature outside the building and at a tavern next door to the building. Mr. Morgan stated that he was not present inside the

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polling place when any of the members to whom he spoke or gave literature actually voted. The Regional Coordinator has advised that neither she nor the Adjunct Coordinator had observed any campaigning taking place in the polling place.

The *Rules* do not prohibit campaigning outside the polling place. Article III, Section 1 of the *Rules*. The *Rules* also do not prohibit observers from campaigning. Only when the member has exercised his right under Article IX, Section 1(c) of the *Rules* to be excused from work for the purpose of observing is campaigning by him prohibited. Article IX, Section 1(c) of the *Rules*. Mr. Morgan used his vacation to be away from work on January 20, 1991; engaging in campaign activities while on vacation does not violate the *Rules*. Article VIII, Section 10(a) of the *Rules*. The campaigning conducted by Mr. Morgan does not violate the *Rules*.

IV. Conclusion.

Based on the foregoing, the Election Officer determines that none of the alleged conduct, as set forth in the protest or as discovered through investigation affected the outcome of the Election for Delegate or Alternate delegate from Local Union 378. Accordingly, the protest is **DENIED** in its entirety.

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/ads

cc: Frederick B. Lacey, Independent Administrator
Christine Mrak, Regional Coordinator