



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

Michael H. Holland
Election Officer

(202) 624-8778
1-800-828-6496
Fax (202) 624-8792

April 5, 1991

VIA UPS OVERNIGHT

Honest Change Slate
c/o George W. Lark
4134 Eder Road
Baltimore, MD 21222

Concerned Members Slate
c/o John Catlett
Secretary-Treasurer
IBT Local Union 639
3100 Ames Place, NE
Washington, DC 20018

Re: Election Office Case Nos. Post2-LU639-MID and
P-184-LU639-MID; P-185-LU639-MID; P-233-LU639-MID;
P-234-LU639-MID; P-311-LU639-MID
(Corrected)

Gentlemen

The above-mentioned protests were filed by George Lark on behalf of the Honest Change Slate pursuant to the *Rules for the International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*"). All pre-election protests were deferred by the Election Officer for post-election review. Mr. Lark and his slate allege that a number of incidents occurred during the campaign for IBT delegate elections, which allegedly constituted violations sufficient to prevent their right to a fair and open election. Mr. Lark and his slate assert that the cumulative effect of the alleged *Rules* infractions benefited the Concerned Members Slate, which consisted primarily of incumbent officers of Local Union 639. Each of the charges raised by these protests will be reviewed separately.

A mail ballot election was conducted for Local Union 639 on January 17, 1991. Ballots were mailed on December 28, 1990, and the counting of ballots was directed by the Election Office Regional Coordinator, Grant Crandall, at the offices of Local Union 639. There were nine delegate and three alternate delegate positions to be filled in the election. The ballot had two slates, the incumbent slate, designated as the "Concerned Members Slate", with nine delegate and three alternate delegate candidates, and the challenger slate, called the "Honest Change Slate", with eight delegate and three alternate delegate candidates.

A total of 1,488¹ ballots were received. Including provisional challenges, 474 ballots were initially set aside, and then ultimately resolved with 247 of the challenged ballots being counted, and 227 votes being ruled ineligible. The final tally was as follows:

Delegates

Concerned Members:

John D. Catlett	801
Phillip Feaster	799
John Steger	792
Ronald Warren	778
Robert Perry	765
William Lorentz	762
Ronald E. Boss	748
Lewis Scott, Jr.	748
Clarence Lindsey	743

Honest Change:

Lester Varney	427
Michael Hicks	424
Charles Cushman	415
Ray Kirby	415
Howard Henry	400
Joseph Bonifant	399
Roger Fulp	398
Michael Fohl	343

Alternate Delegates

Concerned Members:

James Woodward	767
Dennis Carter	749
Roger Beam	736

Honest Change: — — — —

Charlie Walsh	420
Vern Kays	404
Les Carr	383

I. P-184-LU639-MID -- Delay in Receipt of Mailing Labels

In the above-referenced protest, Mr. Lark and the Honest Change Slate charge that the incumbents violated Article VIII of the *Rules* by their failure to honor Mr. Lark's request for mailing labels.² On Thursday, December 13, 1990, Mr. Lark requested in writing a continuous set of Cheshire labels in straight zip code sequence with the labels key-coded to distinguish between (1) Shop

¹At the time of the initial count of ballots, the Regional Coordinator misread the tally sheet, and indicated that there had been 1,498 ballots, when, in fact, there were 1,488 ballots

²Local 639 permitted candidates to select a mail house of the candidates' choice for the mailing of campaign literature, the Local directed the mailing labels to such mail house.

Stewards, (2) members employed at Safeway, Giant, Virginia Concrete, the District of Columbia School Board, U.P.S. full-time, U.P.S. part-time, and (3) the remainder of Local Union 639. Local Union 639 in accordance with its practice and the practice of other Washington, D.C. area local unions, forwarded the request by electronic mail to the International Brotherhood of Teamsters ("IBT") requesting the International to produce the labels.

Mr. Lark, on behalf of the Honest Change Slate, had previously requested and received two sets of labels from Local Union 639 and had done two prior campaign mailings. On December 4, 1990, Mr. Lark requested labels for all Shop Stewards, these were produced by the IBT International; the literature was mailed on December 18, 1990. On December 11, 1990, Mr. Lark made a second label request for the entire membership of Local Union 639. This request was also forwarded to the IBT International, which prepared a magnetic tape and forwarded it to Mercle Computer Services. The labels were received by Mr. Lark's mailhouse, and his literature was mailed on December 18, 1990.

Upon receipt of Local Union 639's request to produce the labels that are the subject of this protest, Mr. Richard Bell, an employee of the IBT Office of the General Secretary-Treasurer, communicated with the Election Officer to inquire whether the *Rules* required the IBT International to produce the labels.³ Mr. Bell was informed that the responsibility for the production of the labels was ultimately that of the Local Union, and that the International was not required under the *Rules* to produce the labels. Mr. Bell then contacted Local Union 639, and indicated that the IBT International would not produce the labels in question.

Mr. Lark reported that he met with Mr. John Catlett, Secretary-Treasurer of Local Union 639 on December 19, 1990, and inquired about the production of the labels in question. The next day, December 20, 1990, Mr. Lark, not having received the labels, filed the instant protest. He also contacted Mr. Grant Crandall, Mid-Atlantic Regional Coordinator, who, in turn, called Mr. Catlett to inquire about the labels. Upon being informed by Mr. Catlett that the IBT International would not produce the labels, Mr. Crandall directed the Local Union to produce them.

Mr. Catlett replied that the quickest way to produce the labels was in alphabetical sequence, rather than zip code sequence. Mr. Crandall then contacted Mr. Lark to find out whether alphabetical sequence would be satisfactory.

³Mr. Bell indicated that the repeated requests for labels from Local 639 was creating a burden on the International TITAN printing resources, particularly given the then-increasingly significant, daily demands made upon the TITAN system by the Election Officer in connection with the preparation of lists for Local delegate elections.

Mr. Lark indicated to Mr. Crandall that his mailhouse could not process the alphabetical labels as quickly as the zip code sequence, and, thus, the alphabetical order would not be satisfactory. Consequently, Mr. Crandall by facsimile transmission on December 21, 1990, indicated to Mr. Catlett that the labels would need to be produced "in straight zip code sequence." Mr. Catlett called Mr. Crandall, and indicated that the labels could be produced by the Local Union the following Monday, December 24, 1990. Local Union 639 did, in fact, produce the labels on December 24, 1990, and they were delivered to Mr. Lark's mailhouse on the morning of December 26, 1990. The labels that were produced by the Local Union were pressure-sensitive labels, not the Cheshire format, and consequently could not be processed by Mr. Lark's mailhouse.

In the meantime, Mr. Lark, believing that he would not receive the labels from Local Union 639 in a timely fashion, contacted the Ron Carey Campaign and obtained Local Union 639's mailing list from it. On December 24, 1990, Mr. Lark mailed his third piece of campaign literature, the second mailing directed to the entire Local 639 membership. The literature was mailed eight days prior to the scheduled date for the ballots to be mailed out, albeit four days after Mr. Lark's target date for the mailing. The Concerned Members Slate made one mailing to the membership of Local Union 639 by first class mail on December 26, 1990.

The list obtained by Lark, and the labels produced by Local 639 but not used by Lark, were not key coded as requested by Lark on December 13, 1990. The *Rules* provide in Article VIII, § 6 (a)(2) that "the Union shall honor requests for distribution of literature to only a portion or segment of the membership, as determined by the candidate, if such distribution is practicable." The Election Officer's investigation of the TITAN records maintained by Local 639 demonstrated that the membership list could be sorted by members employed by UPS part-time versus members who are UPS full-time employees. The other methods of coding requested by Mr. Lark required physical review of the membership lists and were thus not practicable within the meaning of Article VII, § 6 (a)(2).

The Election Officer finds that Local Union 639 violated Article VIII of the *Rules* by its delay in providing mailing labels and its failure to code or sort the labels of its members employed by UPS by full-time versus part-time. While the *Rules* were violated, this protest -- being resolved post-election -- will only be granted if the violation affected the outcome of the election. *Rules*, Article XI, § 1 (b)(2).

The Local's delay in producing the mailing labels for the second complete membership mailing done by the Honest Change Slate had no such

effect. The Slate was able to obtain the labels from another source and accomplish its second mailing prior to the date ballots were mailed. While the failure of Local Union 639 to provide a list of full-time versus part-time UPS employees did have the effect of preventing the easy distribution of literature to the subgroupings at UPS with specific campaign messages, this *Rules* violation cannot realistically be found to have affected the outcome of the election. The Honest Change Slate made two complete mailings to the entire membership, including members at UPS. In addition, at least seven different leaflets were distributed by the Honest Change Slate to members of Local Union 639 during the period between mid-December and early January. One of these leaflets was distributed only to feeder drivers at UPS. One leaflet specifically discussed pension matters. Vigorous campaigning was regularly conducted by the Honest Change Slate at UPS, since the members of that slate, as well as the opposition slate, agreed that UPS was the primary base of support for the Honest Change Slate.

The primary focus of the challengers' campaign was at UPS, and they had regular contact personally and through leaflets, as well as mailings to the UPS membership. This denial of the opportunity to distribute what might have been a specialized piece of literature to members of UPS who were already the recipients of heavy campaign interest activities, including receiving campaign leaflets and mailings, cannot be said to have resulted in an impact on the outcome of the election.

III. P-234-LU639-MID -- Misuse of Local Union Newspaper Pictures

On January 2, 1991, Mr. Lark filed a protest alleging that the incumbent candidates had misused the Local Union newspaper in two respects. Mr. Lark charged that the Concerned Members Slate campaign literature contained photographs which had been printed in the December, 1990 issue of Local Union 639's newspaper, The Local Vocal. His second allegation was that the Concerned Members Slate had used various photographs taken of Local Union 639 members at functions of the Local Union, which were arranged as a collage and appeared on the back page of the campaign pamphlet produced by the Concerned Members Slate. It was alleged that these photographs were produced at Local Union expense and that the unauthorized use of facial shots of certain members in the collage created the impression that those members supported the Concerned Members Slate, when, in fact, they did not.

An investigation of these charges revealed the following facts. Regional Coordinator, Grant Crandall, contacted Mr. Robert Kasen, a free-lance writer/photographer, who edits and produces The Local Vocal. Mr. Kasen

indicated that he was paid a flat fee for the production of each issue of the newsletter, and was paid an hourly rate and the cost of materials for the production of certain pictures. He indicated that he keeps a large file of existing pictures that he has taken over the years for use in the Local Union newsletter. With regard to the pictures of incumbent officers that were contained in the December, 1990 issue of The Local Vocal, five of these pictures were actually taken and paid for by the Concerned Members Slate at the time such slate produced campaign literature in 1985. Those same pictures were then used without reimbursement to that slate in The Local Vocal of December, 1990. The remaining fourteen pictures in the December, 1990 Local Vocal were taken for The Local Vocal. Eleven of the twelve pictures used in the Concerned Members Slate literature came from this source without reimbursement to the Local Union. This constitutes a technical violation of the **Rules**, since the Concerned Members Slate utilized pictures that were in Mr. Kasen's permanent file without reimbursing the Local Union. The costs involved were de minimus at best.

Similarly, the pictures used for the collage on the back of the Concerned Members Slate campaign literature were, in part, taken from the permanent file of Mr. Kasen. The investigation of the Election Officer further disclosed that at least three individuals whose pictures were shown in the collage had not personally authorized their picture's use in this campaign literature. As with the individual pictures from The Local Vocal, the collage usage does constitute a technical, but de minimus, violation of the **Rules**.

The allegedly unauthorized use of members' pictures in a collage does not demonstrate improper campaign support by these members in violation of the **Rules**. The photo was of a large number of members of Local Union 639, showing them engaged in Local Union activities, apparently intended to imply that the members of the Concerned Members Slate were active in Local Union affairs. The inference that each member depicted in the collage necessarily supported that slate may not reasonably be drawn. While it is conceivable that a slight degree of confusion may have been produced by the collage, this election was decided by a margin of 315 votes. Given the relatively wide margin of this election, it may not reasonably be concluded that the inclusion in the photo collage of members not supportive of the Concerned Members Slate affected the outcome of the election.

IV. P-311-LU639-MID -- Discrepancy in Number of Labels Provided to Honest Change Slate

On January 14, 1991, Mr. Lark filed a protest concerning the fact that the Local Union provided only 6,616 labels for his slate's membership-wide mailing, but produced 7,088 labels for the Concerned Members Slate's mailing.

On December 12, 1990, Mr. Lark requested the mailing labels for all active members of Local Union 639. This request was relayed to the IBT International, which produced the magnetic tape from which labels were to be produced. The 6,616 labels provided to the Honest Change Slate did not include those members for whom the Local Union had no accurate address. The Concerned Members Slate received 7,088 labels because they specifically requested that they be provided with labels for all members, including those with incorrect addresses.

Whether the failure of the Local Union to provide all of the mailing labels including labels which were known to contain incorrect addresses is a violation of the Rules, the effect of such alleged violation is minuscule at best. While the Concerned Members Slate mailed 472 more pieces of campaign literature than the Honest Change Slate, the mailing was done to addresses known to be incorrect. It is highly unlikely that the incorrectly-addressed envelopes containing campaign literature would ever be received by the membership.⁴ In view of the other means used by the Concerned Members Slate to reach the membership, there is no possibility that the Local's failure to include the admittedly incorrectly addressed mail labels when responding to the request by the Honest Change Slate had any impact on the outcome of the election.

V. P-327-LU639-MID – Incomplete List of Employers

On January 17, 1991, Mr. Lark filed a protest alleging that the worksite list provided to him by the Local Union was incomplete because it only listed the sites of employers whose members were on dues check-off. Upon investigation by the Election Officer, it became clear that there was confusion between Mr. Lark and Secretary-Treasurer John Catlett about the contents of the list Mr. Lark had received. The Election Officer's investigation demonstrated that the list was complete and included all employees regardless of the method by which members' dues were paid.⁵ Consequently, this protest is DENIED.

⁴In the mail ballot election, over 540 ballot packets were returned as undeliverable.

⁵While not required by the *Rules* to do so, see *Rules* Article VIII, § 1, the Local provided the number of members per employer, where the members were on dues check-off, since that was readily obtainable by computer printout, perhaps leading to the confusion between Messrs. Lark and Catlett.

VI. Post2-LU639-MID -- Use of Union Property and Eligibility Determinations at Election

During the actual counting of the ballots, which took place on January 17 (and the early morning hours of January 18), 1991, Mr. Lark filed two additional protests. The first was a general allegation that the Local Union officers had misused Union property, the second concerned the voter eligibility determinations made by the Election Officer representatives at the time of the election.

With regard to the protest involving the misuse of Union property. Mr. Lark acknowledged that he did not have any evidence of such misuse. The Election Officer investigation uncovered no evidence of misuse of Union facilities or funds by the Local Union officers or the members of the Concerned Members Slate. Accordingly, this protest is DENIED.

With regard to the voter eligibility determinations made at the election, Mr. Lark maintained that the Local's inaccurately-maintained TITAN records prevented the proper resolution of challenged ballots.

There were two categories of challenged ballots. All 252 ballots cast by members employed at the District of Columbia School Board members were provisionally challenged, because the Election Control Roster, the basic list of eligible voters prepared from upon TITAN records of eligibility status as of the month prior to the election month, was insufficient on its face to determine the eligibility of those members. Individual TITAN records for each such member was therefore obtained.

Dues records of these members were complicated by several factors: Some of these members do not work during certain summer months. The School Board often remits dues in an amount different than the amount owed. Some members were listed in the TITAN system after an organizing drive in the mid-1980's, but before they joined the Local, which occurred when the first collective bargaining agreement was signed, creating an artificial appearance of an arrearage. Thus, individual TITAN records had to be, and were, reviewed by the Election Office. A review of the individual TITAN records of these members provided adequate information to determine the eligibility of members affected these problems.

Additionally, Secretary-Treasurer Catlett had directed the Local Union's TITAN operator to "correct" the TITAN records of all members employed by the School Board who were currently paying dues, to reflect that their dues were current. The Local has no policy which would permit dues arrearages to be waived in this manner. To change dues records to enable ineligible members to vote would clearly violate the *Rules*. The dues records of twenty-one voting members were so changed. Of the 211 D C School Board members' ballots returned, the Election Officer was able to clearly ascertain from the TITAN dues record that 190 such individuals were eligible to vote. Thus, only twenty-one voting members had incorrectly been granted waivers by Secretary-Treasurer Catlett. Not only were these voters' ballots not counted, but with

a margin of 315 votes between the last delegate chosen and the highest who was not elected, the twenty-one votes could not have affected the outcome of the election even if they had been counted.

There were 246 challenged ballots of members other than School Board employees. Of these challenged ballots, fifty-seven were counted as eligible. The TITAN records maintained by Local Union 639 were such that over half of the eligibility determinations of all ballots could not be resolved by consulting the members' individual TITAN record. More than twenty employers were behind at least one month in the remittance of check-off dues; some were as far as four months behind. Additionally, some employers did not remit the precise amount of dues, or failed to make up for dues remittances that had been missed in a prior month, such as when a member was on vacation

A review by the Election Office of the dues practices of each employer, however, as revealed by the TITAN record, permitted the Election Officer representatives counting the ballots to determine with a high degree of accuracy the eligibility status of individual members. While this process was more time-consuming and painstaking than would have been the case if the dues records were more accurately kept, accurate information ultimately could be ascertained and eligibility determinations on an accurate basis were made.

Accordingly, the poor dues collection practices and records of the Local Union did not prevent the accurate determination of the voting eligibility of members. Only a small number of ballots could have been affected by the improper practices of the Local Union. Further, these problems were discovered prior to the counting of ballots. The final results have a high degree of accuracy and the alleged violations did not affect the election results.⁶

VII. Conclusion

Each alleged violation has been discussed in detail. The Election Officer has found that violations of the Rules had occurred. However, these protests are being

⁶When Election Officer representatives went to the Post Office to pick up the ballots for Local Union 639's election, they were not given one tray of 148 ballots by Postal officials. This was true despite the fact that recurrent discussions before the election had taken place with Postal officials to make sure that all ballots would be distributed. At the time ballots were picked up, repeated requests were made to Postal officials to make sure that all ballots were obtained. Nonetheless, 148 ballots that were received by the Post Office by approximately January 4, 1991 were not given to the Election Officer representatives on January 17, 1991 and, thus, were not counted. Because the margin of victory was 315 votes, this number of uncounted ballots could not have affected the outcome of the election.

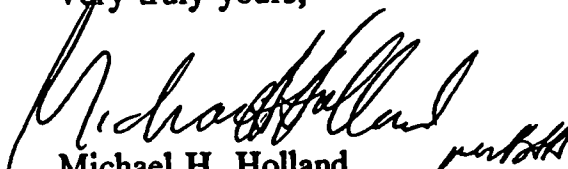
George W Lark
Page 10

considered post-election and the Rules and existing legal standards require that the magnitude of the violations in terms of their potential impact on the outcome of the election be evaluated

That evaluation reveals that these violations, even when considered cumulatively, could not have affected the outcome of the election. This was a vigorously contested election in which the Honest Change Slate made three mailings, and passed out at least seven separate pieces of literature. The slate actively campaigned. The violations committed by Local Union 639 simply cannot realistically be seen to have affected the outcome of the election.⁷ The Election Officer hereby finds that the violations of the Rules discussed above do not constitute a basis for overturning the election, and the election results are, thus, final. Accordingly, the deferred pre-election protests and the post-election protests are collectively 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. 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.

Very truly yours,


Michael H Holland

MHH/mca

cc Frederick B Lacey, Independent Administrator, IBT
Grant Crandall, Election Office Regional Coordinator

⁷The Local Union will be separately directed with specificity to correct its poor recordkeeping prior to the IBT International officer election.