

OFFICE OF THE ELECTION OFFICER  
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April 4, 1991

**VIA UPS OVERNIGHT**

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Secretary-Treasurer  
IBT Local Union 921  
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Room 213  
San Francisco, CA 94105

Jack Ford  
1021 Everglade  
Pacifico, CA 94404

Michael O'Rourke  
4540 California St #6  
San Francisco, CA 94118

Adele DeCampli-Cirkeles  
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Alameda, CA 94501

Frank Stamavage  
261 Miramar Ave  
San Francisco, CA 94112

**Re: Election Office Case No. Post-22-LU921-CSF**

Gentlemen

A post-election protest was filed by Mr Ben R Papapietro, Jr , Secretary-Treasurer of Local 921 and a candidate in the delegate election, on February 8, 1991, pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") Mr Papapietro essentially alleged that Business Agent and candidate Jack Ford was unfairly advantaged by the distribution of his campaign literature through an employer internal distribution system on the day prior to the in-person election at Local 921

The election at Local 921 took place from 7 00 am to 7 00 pm by in-person voting on February 6, 1991 There were four candidates for delegate and four for alternate delegate with a single delegate and one alternate to be selected The results of the election were:

Jack Ford	29
Andy Chirkelis	15
Ben Papapietro	13
Mike O'Rourke	3 <sup>1</sup>

The essential facts concerning the mechanism of distribution and requested posting of the campaign literature in question are undisputed. On the morning of February 5, 1991, before the opening of the Local Union's office, Mr Jack Ford left copies of campaign flyers on the desk of Rosemary Daniels, a secretary employed by the Local. Mr Ford called Ms Daniels and asked her to distribute these leaflets by means of the employer internal distribution system historically used by the Local for the distribution of Union material.

Mr Ford then spoke with Mr Gene Sandifer, President of the Local. Although there is a dispute between Mr Ford and Mr Sandifer about what exactly was said in that conversation, it is undisputed that Mr Sandifer became aware that the flyers to be distributed were campaign literature and he directed that they be placed in plain white envelopes rather than Local 921's envelopes. On that same day, Secretary-Treasurer Papapietro was made aware of the distribution of campaign literature on behalf of Mr Ford and, except for the question of the appropriate envelopes in which the literature was to be distributed, did not raise objection to the distribution of the literature at that time. The campaign literature was in fact distributed through the internal system of the San Francisco Newspaper Agency, the principal employer of members of the Local and was posted on several bulletin boards at the facilities of the employer.

Mr Papapietro asserts that the conduct in question violates several provisions of the *Rules*. He initially claims that there was an agreement among the candidates not to campaign, which was violated, he claims, by Mr Ford through this distribution of campaign literature. He also asserts that Mr Ford was improperly able to have access to the Local Union's membership list in the sense that the campaign literature was distributed to shop stewards of the Local and that this access was unequal to that provided to other candidates. He also complains that the Secretary-Treasurer of the Local was not notified and that Union funds were used in the distribution of the campaign flyer.

The resolution of these issues depends upon reference to the basic rights guaranteed to candidates by the *Rules* and upon the factual investigation conducted by representatives of the Election Office. The investigation revealed that there had not been a definite agreement among the candidates not to campaign. Consequently, and without regard to whether the Election Officer would give countenance to or be bound by such agreement, each candidate, including Mr Ford, was free to avail himself of the campaign opportunities permitted under the *Rules*.

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<sup>1</sup>The protest concerns only the delegate race. The alternate delegate race, which resulted in a tie vote, was determined by a lot drawing on February 14, 1991, with President Gene Sandifer being selected as the alternate delegate from Local 921.

With regard to the contention of Mr. Papapietro that Mr. Ford was given an unfair advantage by the distribution of his leaflet, it must be observed that the Local Union did not preclude other candidates, including Mr. Papapietro, from distributing their literature. Thus, the Election Officer finds that there was no discrimination by the Local Union in favor of Mr. Ford with regard to the distribution of this campaign literature. See *Rules*, Article VIII, § 2 and 6. Mr. Papapietro's complaint that the request for distribution was not made to the Secretary-Treasurer, while technically true, is of no significance in this instance. The request was communicated to the President of the Local Union, and Mr. Papapietro, the Secretary-Treasurer and an opposing candidate, became aware of this request on the day that the literature distribution took place. Mr. Papapietro made no protest with regard to the distribution at that time. He further never sought similar access for a campaign distribution in support of his candidacy.

Mr. Papapietro also complains that the collective bargaining agreement permitting the posting of literature on employer-site bulletin boards confines that posting to "official matters pertaining to Union business only." Collective bargaining agreement with San Francisco Newspaper Agency, Section 9 [p. 9]. Mr. Ford responded that the distribution system and bulletin boards in question had as a matter of past practice not been confined to official Union business. He specifically provided two examples: a May, 1990 TDU sponsored program in San Francisco and a recent notice for a demonstration against the war in the Persian Gulf. The Election Officer's investigation therefore concluded that the distribution system and bulletin boards had in fact not been confined to official Union business but had included political leaflets. Accordingly, no violation is found upon this basis. See Advisory on Political Rights.

Finally, Mr. Papapietro argues that the distribution of this literature using the time of a paid secretary at the Local Union constitutes a financial benefit to the campaign of Mr. Ford which was not reimbursed to the Local Union. See *Rules*, Article VIII, § 6 (d) and 10 (b) and (c). A similar issue was addressed in Election Office Case No. P-410-LU769-SEC. In that case, the Election Officer found that the mailing by a candidate of literature to employer sites for distribution by posting the literature on employer bulletin boards did not constitute a violation sufficient to require a rerun of the election. This decision was appealed to the Independent Administrator who decided the matter in Election Case 91-Elec App -109 (SA) on March 26, 1991. The Independent Administrator found

The Election Rules clearly contemplate that Union bulletin boards will be utilized as a means of communication about election related matters. See Election Rules, Article VIII, § 10 d.

The Independent Administrator specifically found that if a representative of an employer in an isolated instance posted a campaign leaflet furnished by one candidate, instead of forwarding the material to the Union steward for posting, "a violation of the Election Rules (if it exists at all) must be considered de minimus."

In this instance, the alleged improper distribution was through Union channels to shop stewards, not through employers, but the analysis is the same. The improper contribution, here alleged to have been provided by the Union and in 91-Elec.App.-109 by the employer, is de minimus. The method of distribution was available to any candidate. Thus, the method of distribution utilized by Mr. Ford does not constitute a violation.

Nor does the Election Officer find that the brief period of time expended by the hourly employee, Ms. Daniels in placing the leaflets in the white envelopes for distribution by the employer internal system is a *Rules* violation sufficient to overturn the election. While an unreimbursed minimal expenditure may constitute a technical violation of the *Rules*, see, e.g., Article X, § 1 (a)(3), it is not necessarily the case that every technical violation of the *Rules* constitutes a basis upon which an election must be overturned. 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), International Union of Operating Engineers, 366 F.2d 438 (2nd Cir. 1966). There is no evidence that the same services provided for Mr. Ford by Ms. Daniels were not available to all candidates. Mr. Ford's opponent, Mr. Papapietro, never requested a campaign literature distribution similar to the one done for Mr. Ford. The minimal expenditure by Local Union personnel of a very short period of time on behalf of a candidate, cannot reasonably be found to have affected the outcome of the election. Mr. Ford had almost twice the votes of his nearest competitor. No reasonable nexus can be found between this technical violation and the outcome of the election.

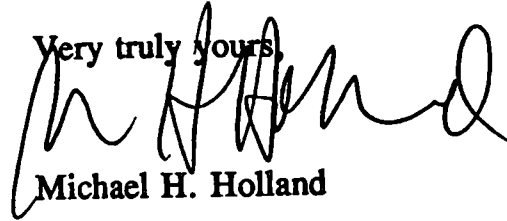
Accordingly, the post-election protest of Mr. Papapietro is DENIED.

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,

Ben R Papapietro, Jr.  
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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,

A handwritten signature in black ink, appearing to read "Michael H. Holland". The signature is fluid and cursive, with a large initial "M" and "H".

Michael H. Holland

MHH/mca

cc Frederick B Lacey, Independent Administrator  
Donald E Twohey, Regional Coordinator

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IN RE:

BEN R. PAPAPIETRO, JR.

and

JACK FORD

and

IBT LOCAL UNION NO. 921

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: 91 - Elec. App. - 128 (SA)

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: DECISION OF THE

: INDEPENDENT

: ADMINISTRATOR

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This matter arises out of a appeal from an April 4, 1991, decision of the Election Officer in Case No. POST-22-LU921-CSF. A hearing was held before me by way of telephone conference on April 12, 1991, at which the following persons were heard: John J. Sullivan and Barbara Hillman on behalf of the Election Officer; Michael Gaitley, an Adjunct Regional Coordinator; appellants Andris Cirkelis and Michael O'Rourke; Jack Ford, the successful delegate candidate from Local 921; Ben Papapietro Jr., Secretary Treasurer of Local 921; Gene Sandifer, President of Local 921; Mrs. Cirkelis, Mr. Cirkelis' wife; and Mr. Stanavage, a member of the Local.

The election for one delegate and one alternate delegate to the 1991 IBT Convention from Local 921 was conducted by direct, in-person voting on February 6, 1991. There were four delegate candidates. Jack Ford won the election. Mr. Ford received 29 votes. The next highest vote getter was Mr. Cirkelis who received 15 votes. Mr. Cirkelis was followed by Mr. Papapietro, who received 13 votes. Lastly, Mr. O'Rourke received 3 votes.

Mr. Papapietro filed the original protest in this matter. He alleged that on the day before the election Mr. Ford distributed a campaign flyer in violation of the Rules For The IBT International Union And Delegate Officers Election (the "Election Rules"). The Election Officer denied that protest in his decision of April 4, 1991. Although Mr. Papapietro did not appeal the Election Officer's ruling, the other two losing candidates Messrs. Cirkelis and O'Rourke did.

The material facts are not in dispute. On the morning of February 5, 1991, Mr. Ford visited the Local Union Hall and left copies of campaign flyers on the desk of Rose Daniels, a secretary employed by the Local. It was Mr. Ford's intention to have Ms. Daniels distribute his flyers to shop stewards at the nine or so branches and plants of the San Francisco News Agency, the primary employer of Local 921 members. Later in the day, Mr. Ford called Ms. Daniels and asked her to send the flyers through the "usual distribution channels." By usual distribution channels Mr. Ford contemplated that his flyer, along with other Local Union mail, would be left for pick-up by News Agency drivers, who would then transport the material to the various worksites during their regular routes.

Pursuant to Mr. Ford's request, Ms. Daniels placed the flyers in Local Union envelopes for distribution. Prior to the distribution of the flyers, Mr. Ford talked with President Sandifer. It is not disputed that as a result of that conversation Mr. Sandifer became aware that Ms. Daniels would distribute Mr. Ford's campaign



flyers through the usual distribution channels. In fact, Mr. Sandifer told Ms. Daniels to remove Mr. Ford's flyers from the Local Union's official envelopes and to insert them into plain white envelopes before distribution. Ms. Daniels did so.

It is also not disputed that later in the day, after the distribution of Mr. Ford's flyers, Secretary-Treasurer Papapietro learned of the distribution. Mr. Papapietro did not raise any objection to the distribution of the flyers at that time. He also did not seek to have the distribution interrupted.

Mr. Ford's campaign flyers, thus distributed, appeared on several bulletin boards at various work sites. According to Secretary-Treasurer Papapietro some of the shop stewards distributed the flyer, some posted it, some ignored it.

Mr. Papapietro first asserted that Mr. Ford's conduct violated an agreement reached among the candidates at Local 921 that they would not engage in any campaigning. Although the question of whether such an agreement was ever reached remained somewhat in dispute, it is clear that if such an agreement did in fact exist it would be repugnant to the letter and spirit of the Election Rules and thus would have no binding effect. The Election Rules are designed to allow candidates to freely and openly communicate with the rank-and-file. Any agreement designed to stifle such an exchange can not be enforced.

The second challenge to the distribution of Mr. Ford's flyers is rooted in Article VIII, Section 6.c. of the Election Rules, Article VIII, Section 6.c. provides in pertinent part that:

Any request for the distribution of literature shall be made by the candidate to the Secretary-Treasurer in writing. The request shall specify the portion of the membership that is to receive the mailing and instruction as to the class or type of mail or postage desired.

It is suggested that since Mr. Ford did not make a written request to the Secretary-Treasurer concerning the distribution of his flyer he violated this provision. As explained by the Election Officer in his Summary:

The requirement that a request to distribute literature should be made in writing to the Secretary-Treasurer, Section 6(c) is intended to protect both the requesting candidate and the responsible Local Union from the misunderstanding, that are more likely to arise if any undertaking of considerable importance and expense is arranged orally.

Plainly, the underlying concerns of Section 6 are not implicated when a candidate undertakes to have a discrete number of leaflets posted on union bulletin boards rather than to have a mass mailing to each and every member's residence accomplished.

I agree with the Election Officer's interpretation. The requirement for a written request pursuant to Section 6.c. clearly contemplates a mass mailing of campaign literature.

Nonetheless, the President of the Local, Mr. Sandifer, was made well aware of the distribution of Mr. Ford's campaign flyers and posed no objection other than the switching of the envelopes. In addition, when Mr. Papapietro learned of the distribution of the flyers, he too raised no objection. Admittedly, Mr. Papapietro learned after the fact. In any event, however, he did not attempt to stop the distribution or to have the flyers removed from Union bulletin boards. Thus, although no written request was made, the principal officers of the Local knew of the distribution.

An objection is also raised to Mr. Ford having used the Local's secretary and the Local's distribution channels to distribute his flyers. Clearly the Election Rules prohibit the use of Union funds to support any campaign. See e.g., Article VIII, Section 6.d. ("Each candidate shall pay, on a reasonable basis, for the actual cost of distribution, including stationary, duplication, time required to do the work and postage for mailing."); Article VIII, Section 10.b. ("[S]uch campaigning must not involve the expenditure of Union funds."); Article VIII, Section 10.c. ("Union funds, facilities, equipment, stationary, etc. may not be used to assist in campaigning unless the candidate reimburses the Union for such cost and such goods and services are equally available to all candidates and all candidates are notified in advance of the availability of such goods and services."); Article X, Section 1.b.(1) ("No employer shall be permitted to contribute anything to any campaign."); and Article X, Section 1.b. ("No Union funds or goods shall be used to promote the candidacy of any individual.") Notwithstanding these proscriptions, however, the Election Rules are clear that a Union must comply, on a non-discriminatory basis, with a candidate's request to distribute campaign literature. Pursuant to the Election Rules, however, the candidate must bear the ultimate cost of such distribution.

I find it significant that there is no suggestion that the same services provided to Mr. Ford were not available to the other candidates. The other candidates simply never requested that the Local distribute any campaign material for them. Thus, the Local

did not favor one candidate over another. The only issue that remains to be addressed is the cost of the distribution of Mr. Ford's flyer.

It is not disputed that Mr. Ford did not pay the Union anything for the cost of Ms. Daniels time or the cost of the driver to deliver his flyers to the worksites along with other Local Union material. When asked why the Local never charged Mr. Ford, Mr. Papapietro stated that the costs incurred were "incidental." Given this, the Election Officer found the Local's failure to charge Mr. Ford for the distribution of his flyers a de minimis violation of the Election Rules which was "too minimal" and "too insubstantial to require the draconian remedy of setting aside the election." As stated by the Election Officer in his Summary:

As Article XI, Section 1.b. (2) [of the Election Rules] makes clear, post-election protests will be remedied only if the alleged violation may have effected the outcome of the election . . . .

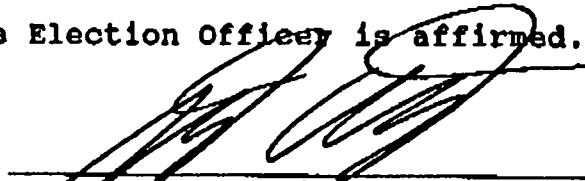
In this case, Mr. Ford garnered almost twice the votes of his nearest opponent, thus, the Local's failure to charge Mr. Ford for the incidental cost of distributing his flyer could not be said to be a violation of the Election Rules which "may have affected the outcome of the election."

It is also suggested that Mr. Ford had an unfair advantage in the election because he used Union stewards to post his flyer at the various work sites. As with the Local's distribution of the flyer, there is no suggestion that the other candidates would have been unable to avail themselves to Union stewards to have their

campaign literature posted at the various work sites. No such request, however, was made.

Lastly, it is also suggested that Mr. Ford's use of Union bulletin boards was improper. The Election Officer's investigation disclosed that the bulletin boards in question had, as a matter of past practice, not been confined to official union business, but had been used to post material related to political matters within and outside the Local. As clarified by the Election Officer in an Advisory On Political Rights issued on December 28, 1990; "where past practice in a particular facility affords members access to the bulletin board, that practice will be honored in this election." Thus, the fact that Mr. Ford's flyers were posted on such bulletin boards is not a violation of the Election Rules, but is in fact consistent with those Rules.

Accordingly, the ruling of the Election Officer is affirmed.



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

Dated: April 17, 1991