

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

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April 11, 1991

**VIA UPS OVERNIGHT**

John Kelder  
18 Farries Avenue  
Florida, NY 10921

James E. McNeil  
President  
IBT Local Union 707  
66-20 Queens Blvd.  
Woodside, NY 11377

Michael J. Morris  
66-20 Queens Blvd  
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Dominick Milano  
66-20 Queens Blvd.  
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Vincent Cordato  
66-20 Queens Blvd  
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Clarence W. Shifflett  
66-20 Queens Blvd.  
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Henry J. Saltalamachea  
66-20 Queens Blvd  
Woodside, NY 11377

James Buckley  
66-20 Queens Blvd.  
Woodside, NY 11377

**Re: Election Office Case No. Post-23-LU707-NYC**

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 Susan Jennick, an attorney, on behalf of John Kelder, a member of Local 707 and a candidate for delegate. The protest alleges that the *Rules* violation committed by Mr. Kelder's employer, Yellow Freight, as determined by the Election Officer by letter dated January 8, 1991, Election Office Case No. P-160-LU707-NYC, affected the outcome of the election. Complainant seeks an order of the Election Officer requiring a rerun

election Complainant further alleges that there were mailing irregularities in connection with the mail ballots that lends further support to the request for a rerun election.

Local Union 707 held its delegate election exclusively by mail ballot. The ballots were mailed on or about December 28, 1990 and were counted on January 25, 1991. Local 707 was required to elect 5 delegates and 2 alternate delegates to the IBT International Convention The tally of votes cast and counted was as follows

James McNeil	961
Michael J Morris	974
Clarence W. Shifflett	870
Henry J Saltalamachea	930
James Buckley	947
John Kelder	581

Thus, the margin between the fifth ranked delegate candidate and Mr Kelder, the sixth ranked delegate candidate, was 289 votes. The alternate delegate election was uncontested.

Article XI, § 1 (b) 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 Although the margin in this election is relatively large, Complainant contends

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that the employer's violation in failing to provide access to the largest portion of the Local membership affected the outcome of the election. Thus, the Election Officer has conducted an investigation of this protest.<sup>1</sup>

Generally, a violation of the *Rules* is not grounds for setting aside an election unless there is a reasonable probability that the outcome of the election may have been affected by the violation. Wirtz v. Operating Engineers, 366 F 2d 438 (2nd Cir 1966) To determine whether an effect exists the Election Officer determines whether mathematically the effect was sufficient in scope to affect the outcome of the election and/or whether there is a causal connection between the violation and results or outcome of the election. Dole v. Mail Handlers, Local 317, 132 LRRM 2299 (D C M D Ala, 1989). Since the Election Officer has already determined that the *Rules* have been violated by Yellow Freight, an employer of IBT members, the issue thus becomes whether said violation affected the outcome of the election. For the reasons set forth below, the Election Officer determines that it did not.

The Local Union has advised the Election Officer, and the Election Officer has verified, that there are approximately 1,700 members employed at Yellow Freight, Maybrook facility Mr. Kelder is one of those employees. As an employee, and in accordance with the Advisory on Political Rights, Mr. Kelder was permitted to campaign

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<sup>1</sup>The Local maintains that the post-election protest was not timely filed under the *Rules* which require filing within 72 hours of the posting of the tally Ms Jennick represents that the protest was forwarded to the Election Officer in a timely fashion by her office. Based on Ms Jennick's representation, the Election Officer will consider the protest.

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in non-work areas during non-work time as well as exterior to the facility such as parking lots. Yellow Freight refused to permit access to the interior of the facility other than during his work shift and one-half before and one-half after his work shift. This prohibition resulted in a protest and the Election Officer's decision in P-160-LU707-NYC.

As noted above, the Election Officer determined by letter dated January 8, 1991 that Yellow Freight had violated the *Rules* by denying Complainant access for purposes of campaigning to the interior of its facilities, e g , break rooms, bulletin boards, etc , during times in which he was not scheduled to be working. Complainant had filed prior complaints against Yellow Freight which resulted in Election Officer determinations resolving complainant's protest concerning campaigning during non-work times in non-work areas and posting campaign materials on the general purpose bulletin board. (See Election Office Case No P-034-LU707-NYC.) Thus, even prior to the Election Officer's decision in P-160-LU707-NYC, Complainant had access to the interior of the Maybrook facility and was able to engage in campaign activities during his lunch and break periods as well one-half before and one-half hour after his scheduled work shift. At all times, Mr Kelder had access to the exterior of the Maybrook facility, such as in the employee parking lot or at the employee entrances to the terminal, for campaigning. Complainant has also advised the Election Officer that he completed a mailing to all members of the Local. The determination of the Election Officer concerning access to the interior of the terminal during non-scheduled work times was appealed to the Independent Administrator and prior to determination by the Independent Administrator

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was resolved by the parties on January 14, 1991, some 10 days before the ballots were counted to allow Complainant access.

Mr Kelder had access to all of the Local's membership through his campaign mailings. He also had access to all members employed by Yellow Freight at the Maybrook facility even prior to the Election Officer's decision in P-160-LU707-NYC. He had the entirety of the access sought by his last protest for 10 days prior to the election. Yellow Freight's refusal to allow Mr Kelder to campaign in the interior of the Maybrook terminal during times he was not scheduled to work during approximately a twenty-five day period, from the date the protest until its resolution, did not affect the outcome of the election. Mr Kelder was obviously able to communicate and did communicate with all members employed by Yellow Freight at his work location.

Complainant also protests that mailing irregularities in connection with the mailing of the ballots should void the election. Complainant has identified the mailing irregularities as follows:

- (1) Individuals received ballots who were not members in good standing and therefore ineligible to vote, and
- (2) Members who were eligible to receive ballots did not receive ballots

With regard to the first alleged irregularity, it has been the consistent policy of

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the Election Officer to use a mailing roster of, and thus mail ballots to, members who are not only coded on the TITAN records as active members but also, generally, to members who have TITAN codes showing that they are new applicants, not active due to layoff or in arrears in dues. All such members are mailed ballots in order to permit participation in the election process in the event the condition which made such members ineligible is resolved prior to the date of the actual election. Thus, it is not a violation of the *Rules* for ballots to have been mailed to members who may not be eligible to vote at the time of the mailing, such members might be eligible to vote at the time of the election.

A second and more limited roster is used on the date of the election. There is no allegation that ineligible members who received ballots had their votes, if cast, counted.

With regard to the second allegation, complainant states that 52 members requested additional ballot mailings (Additional ballots were, in fact, mailed to all such members by representatives of the Election Officer). Complainant also alleges that 5 members did not receive ballots but did not call in and request one. Complainant also advised that he knows of one individual who received two ballots, one who did not receive a ballot until one day before the count, one who did not receive a secret ballot envelope, and one whose envelope bore a different name.

The election notice for this election clearly states that any eligible member not receiving a mail ballot by January 15, 1991 should contact the office of the Election

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Officer All members were advised of the appropriate procedures to be taken if in fact a ballot was not received or if the ballot packet was incomplete or incorrect in any way. Only 52 members requested a new ballot. No evidence was presented by the complainant to suggest that a significant number of members did not receive ballots. Further, the number of ballots voted, approximately 35%, is consistent with, if not somewhat greater than, the voter turnout in other delegate and alternate delegate mail ballot elections. There is no evidence that a number of members sufficient to affect the outcome of the election did not receive ballots or received an incomplete ballot packet or were not aware of the steps to be taken in the event a ballot or proper ballot packet was not received.

Based on the foregoing, it is determined by the Election Officer that the violation by Yellow Freight of the *Rules* as set forth in the determination of the Election Officer dated January 8, 1991, did not affect the outcome of the election. The Election Officer further determines that no mailing irregularities occurred that violates the *Rules* or that would affect the outcome of the election. Accordingly, the post-election protest 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



IN RE:

JOHN KELDER,

and

YELLOW FREIGHT SYSTEMS, INC.

91 - Elec. App. - 129 (SA)

DECISION OF THE  
INDEPENDENT  
ADMINISTRATOR

This matter arises out of an appeal from an April 11, 1991, decision of the Election Officer in Case No. [REDACTED]. A hearing was held before me by way of telephone conference on April 18, 1991, at which the following persons were heard: the complainant/appellant, John Kelder; Mr. Kelder's attorney, Susan Jennik; Eugene Friedman, an attorney on behalf of Local 707; John J. Sullivan and Barbara Hillman, on behalf of the Election Officer; Amy Gladstein, the Regional Coordinator; and Susan Thompson, the Adjunct Regional Coordinator.

John Kelder is a member of Local 707 and an employee of Yellow Freight Systems, Inc. ("Yellow Freight") at its Maybrook facility. Mr. Kelder was an unsuccessful candidate for delegate to the IBT International Convention. Local 707 held its delegate election by mail ballot. The ballots were mailed on December 28, 1990, and counted on January 25, 1991. About 35 percent of the members voted. Local 707 elected five delegates. John Kelder came in sixth with 581 votes. He trailed the lowest vote-getting winning candidate by 289 votes. Mr. Kelder argues that the election should be rerun for two reasons. First, Yellow Freight violated his right

to campaign. Second, Mr. Kelder relies on certain alleged irregularities in the mailing of the ballots.

Dealing first with the alleged interference with Mr. Kelder's right to campaign, the Election Officer explained in his Summary the following:

On December 18, 1990, Mr. Kelder attempted to campaign among his fellow IBT members an hour and 45 minutes before he was due to start his shift. He was advised by a Yellow Freight manager that he was not to campaign inside the Yellow Freight facility more than a half hour before or after his shift. Mr. Kelder protested that restriction to the Election Officer, who determined on January 8, 1991, in Election Office Case No. P-160-LU707-NYC that Yellow Freight's half-hour window policy violated Mr. Kelder's access rights. After Yellow Freight appealed the Election Officer's decision to the Independent Administrator, the parties reached a settlement pursuant to which Yellow Freight agreed not to restrict IBT members employed at its Maybrook facility from campaign in non-work areas during non-work time, including campaigning during periods beyond the member's work shift and one-half hour before and after. That agreement was memorialized in a letter from the Election Officer to the Independent Administrator dated January 15, 1991.

Mr. Kelder protests that the remedy came too late. During the 25-day period between the date he filed his protest and the date on which the dispute was resolved in his favor, Mr. Kelder was only allowed to campaign inside the Yellow Freight facility during his breaks and lunch hours, as well as during the half hours immediately before and after his shifts; at all other times he was restricted to campaigning outside the facility, albeit on Yellow Freight's private property.

Despite the limitations placed on Mr. Kelder's access into Yellow Freight's facility during the period from December 18, 1990, to January 15, 1991, Mr. Kelder had other effective means of access to his fellow Local Union members. During this period, Mr. Kelder enjoyed direct access to Yellow Freight employees inside the facility during his breaks and lunch hours, and during the half-

hour period before his shift began and the half-hour period after his shift ended. While admittedly, this access is not as great as an unlimited right to roam freely throughout the facility at all hours, it certainly provided Mr. Kelder an opportunity to talk to many of his fellow members at the Yellow Freight facility.

Moreover, as of January 15, Mr. Kelder enjoyed unlimited access to members inside the Yellow Freight facility. Here, it is recognized that while many ballots may have already been cast, Mr. Kelder had an opportunity to meet and speak with his fellow Yellow Freight employees who had not yet voted and perhaps urge those who had not already voted, to do so.

In addition, Mr. Kelder completed a campaign mailing sometime in early January 1991. Mr. Kelder explained that the mailing was a "targeted" mailing limited by zip code. Mr. Kelder excluded those zip codes in which he believed members employed at the Maybrook facility of Yellow Freight lived. In short, Mr. Kelder intentionally avoided an opportunity to reach these Yellow Freight employees by excepting them from his mailing. It is important to remember that this mailing was accomplished during the period in which Mr. Kelder's access to the Yellow Freight facility was limited. Thus, Mr. Kelder's contention that he was unable to reach his fellow members at the Yellow Freight facility is mitigated given that he himself made a conscious decision to not target his mailing to those members.<sup>1</sup>

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<sup>1</sup> It is recognized that campaign mailings are no substitute for face-to-face contact, but under the circumstances presented here,  
(continued...)

Lastly, during the period in question, no one interfered with Mr. Kelder's right to campaign with members outside of the Yellow Freight facility, such as at the entrance ways.

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.  
[Election Rules Article XI, Section 1.b.(2)]

As the Election Officer explained in his Summary:

Under the circumstances, it does not appear probable to the Election Officer that campaigning among employees in non-work areas of the facility during additional non-work time during the 25 days that the restriction was in effect would have closed the major gap of 289 votes between Mr. Kelder and his opponent.

I agree.

As for the alleged mailing irregularities, Mr. Kelder first contends that the election should be voided because members who were not eligible to vote received ballots. As explained by the Election Officer in his Summary:

The first allegation fails to state a defect in the process. To the contrary, it has been the consistent practice of the Election Officer to mail ballots to all members who appear on the union's computerized TITAN records in any status, including those employees who are newly hired, laid off, or in arrears in their dues payments. The rationale of this over-inclusive mailing is to allow for the possibility that the deficiency that precludes a member from active status may be corrected before the voting period has expired, as when a laid off employee is returned to work or dues are brought current. In other words, members who are not eligible to vote at the time of the mailing may be eligible to vote at the

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<sup>1</sup>(...continued)

Mr. Kelder's intentional failure to send his mailing to Yellow Freight employees is, indeed, irrelevant.

time of the election. Those members are entitled to vote. On the date of the election, a roster limited to members in good standing is utilized to determine eligibility to vote. The votes of members determined to be ineligible are not counted. In this case, there is no allegation that the votes of ineligible members were improperly counted.  
[Emphasis in original.]

Thus, the fact that the Election Officer mailed ballots to members who may have been ineligible to vote is simply immaterial given that the Election Officer did not count ballots returned by ineligible members.

Mr. Kelder also argues conversely that some members who were eligible did not receive ballots. Mr. Kelder alerted the Election Officer to 60 examples where eligible members did not receive ballots. Fifty-two of those 60 members, however, promptly received ballots from the Election Officer upon request. The remaining eight members did not constitute a number sufficiently large to have affected the outcome of the election.

Mr. Kelder suggests that while he could point to 60 members who did not receive ballots, many others in the Local may not have received ballots. There is no evidence to support such a supposition. The Election Officer notes that the "ballot return rate of 35 percent is comparable to, indeed, higher than, the 'turn-out' in other elections of large Locals holding their elections by mail ballot." In fact, in a survey conducted by the Election Officer, the average return rate for similarly-sized Locals was 23 percent.

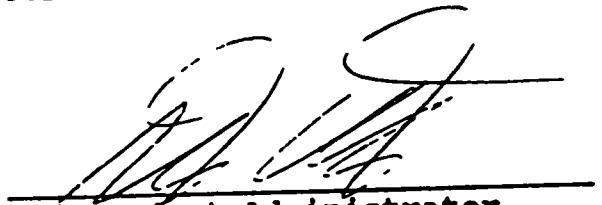
Moreover, as in every election conducted by the Election Officer, the election notice advises members that if they do not

receive a ballot by a certain date, in this case January 15, 1991, they are to contact the Election Office. When the Election Office is contacted, a ballot is promptly mailed. The Election Rules confirm this procedure. See Article XII, Section 3.c.(3). As previously noted, 52 members availed themselves of this process.

Mr. Kelder also points to one member who claimed to have received two ballots. This also is immaterial to the ultimate outcome of the election. Ballot-counting procedures insure against counting more than one ballot cast by the same member. Moreover, Mr. Kelder does not allege that the member who received two ballots did not vote.

In short, the "irregularities" cited by Mr. Kelder in the balloting procedure are simply not sufficient to support his suggestion that a substantial number of members did not vote either because they did not receive a ballot or because the ballots they did receive were somehow defective.

Accordingly, the Election Officer's refusal to set aside the election is affirmed.

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

Dated: April 19, 1991