



OFFICE OF THE ELECTION OFFICER
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May 1, 1991

VIA UPS OVERNIGHT

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c/o Working Teamsters
for Ron Carey
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c/o The Allison Slate
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Marty Wilson
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Oregon City, OR 97045

Re: Election Office Case No. Post27-LU305-PNW

Gentlemen

A post-election protest was filed pursuant to the Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules") by John Simpson and Marty Wilson, unsuccessful candidates for delegate from Local 305 to the 1991 IBT International Convention. The protesters allege that the Local and/or the opposing candidates violated the *Rules* with respect to the delegate and alternate delegate election.

Local 305 held its delegate election by in-person voting on February 14, 1991. The Local elected six delegates and two alternate delegates to the 1991 IBT International Convention. Twelve candidates ran for the six delegate positions, each candidate being affiliated with one of two slates. The alternate delegate positions were uncontested. The tally of ballots for delegate was as follows:

Allison Slate

Tony Andrews	347
Gene Allison	346
John Trout	345
Tom Watt	344
Monty Hordichok	342
Dave Eastman	341

Working Teamsters for Ron Carey Slate

John Simpson	120
Marty Wilson	119
R Keith Nigglh	117
Alvin L Smith	116
Addison C Collier	116
Leon Kuhre	114

As indicated by the tally the candidates ranked one through six were all affiliated with the Allison Slate. The margin between the sixth ranked delegate candidate and the seventh ranked delegate candidate, John Simpson of the Working Teamsters for Ron Carey Slate, was 221 votes.

John Simpson and slate member Marty Wilson filed a joint post-election protest alleging the following violations of the *Rules* by either the Local or the Allison Slate:

- 1) The election plan summary was not posted at all worksites throughout the election period and the notice of the nominations meeting and /or the notice of election were not mailed to each member individually as required by the *Rules*,
- 2) The Local delayed in supplying a worksite list and the list supplied was inaccurate and incomplete,
- 3) The Local failed to supply the complete mailing list of all members as requested by the Working Teamsters Slate for the purpose of completing a campaign mailing,
- 4) The campaign literature distributed by the Allison Slate improperly indicated an endorsement by the Executive Board of the Local and is misleading,
- 5) Local Union officers campaigned On Union time, and
- 6) Campaign literature posted by the Working Teamsters Slate was removed and replaced with literature critical of IBT General President candidate Ron Carey

This is a post-election protest. For a post-election protest to be considered and remedied by the Election Officer, it is necessary to demonstrate that the alleged violation may have affected the results of the election. *Rules*, Article XI, § 1(b)(2). There must be a reasonable probability that "but for" the alleged violation, the results of the election would have been different. Wirtz v. Local Unions 410, 410A, 410B & 410C, International Union of Operating Engineers, 366 F 2d 438 (2nd Cir 1966). Causal relationship must exist between the alleged violation and the outcome of the election.

Dole v. Mailhandlers, Local 317, 132 LRRM 2299 (M D Alabama 1989)

The Election Officer investigated and reviewed each of the allegations set forth by Mr. Simpson and Mr Wilson in their protest in light of these legal requirements. The Election Officer determination with respect to each allegation is set forth separately numbered paragraphs below.

I. Nominations and Election/Election Plan Summary.

Article II, § 3(d) of the *Rules* provides that notice of the nominations meeting may be given each member by any means reasonably calculated to inform all members of such meetings. Thus, there is no requirement of the notice of the nominations meeting be mailed to each member of his/her known home address. The *Rules* however place more stringent requirements to respect to the notice of election. Article II, § 5(d) of the *Rules* requires that notice of the election be mailed to each member of his/her last known home address. This section of the *Rules* also provides that the notice of nomination of election may be combined with notice of the nominations meeting, provided this is more stringent requirements with respect to the election notice be met.

The members of Local 305 received two notices. The first notice, a combined notice of the nomination meeting and the election was published in the November 1990 issue of the Oregon Teamster, mailed to each active member of Local 305 at his/her last known home address. The second notice, a notice of election, was published in the January 1991 issue of the Oregon Teamster, again mailed to each active member at his/her last known home address.

The Election Officer determined that the notice requirements found in Article II, § 3(d) and § 5(d) of the *Rules* are satisfied by publication of such notices in a Union publication as long the publication is mailed to each member at his/her last known home address and provided that the notice is

- (a) conspicuously placed on the front page of the publication has a conspicuous reference to the . . . page where the notice appears,
- (b) the notice clearly identifies the particular Local Union holding the election, and
- (c) all of the other *Rules* requirements regarding the content, distribution and timing of the notice are met. (letter from Election Officer Michael Holland to Local 305 dated August 6, 1990)

See also 29 CFR § 452.100 providing that a labor organization may comply with notice requirements of federal law, identical to the notice requirements of the *Rules*, by publication in the organization's newsletter.

The Election Officer investigation determined, as set forth above, that the notice of the nominations meeting and the notice of election were published in the November 1990 and the January 1991 issues of the Oregon Teamster. Both newsletters were mailed to each active member of Local 305 at his/her last known home address. A

review of the two issues of the newsletter confirms that all requirements contained in the Election Officer's letter of August 6, 1990 were also met. Local 305 conformed with *Rules* with respect to providing notice of the nominations meeting and notice of the election.

During the course of the investigation of this protest, however, it was discovered that 216 members of the Local employed in the seasonal food industry were omitted from the mailing list of Local 305 members who were to receive both the November, 1990 and the January, 1991 issues of the Oregon Teamster. These members did not receive either issue of the newsletter. Failure to provide the notice of the nominations meeting and/or mail the notice of election to Local members is a violation of the *Rules* regardless of whether the failure was intentional or inadvertent. Thus, the Election Officer determines that the omission of 216 seasonal members from the list used to distribute the November, 1990 and January, 1991 issues of the Oregon Teamster which contained the notice of the nominations meeting and the notice of election is a violation of the *Rules*.

Article II § 2(d) of the *Rules* requires that the Local Union Election Plan Summary be posted by the Local at all sites where Union notices are normally posted. The Local Union confirmed that it caused these notices to be posted as required by the *Rules*. Complainants contend, however, that the summary was not posted at half of the worksites they visited while campaigning. They list approximately 15 such worksites, including the worksite of Mr Simpson. Mr Simpson admits that when he contacted his steward, the summary or notice was again posted. The Local states that they were not advised that the summary was not posted or, once posted removed, at any of the indicated worksites. At some worksites, the Summary remained after the election had concluded.

The Election Officer determines that the *Rules* have not been violated. The Local was required to post the Summary and to repost it if advised that the posted Summary had been removed. It would constitute a violation of the *Rules* for the Local to direct or condone removal of the notice. However, the Local is not necessarily able to continually police each and every bulletin board. There is no evidence that the Local violated the *Rules* by failing to post or when notified, repost. There is no evidence that the Local directed, encouraged or condoned the removal of any posted Summary. The Election Officer determines that the *Rules* have not been violated.

It should also be noted that this portion of the post-election protest was not timely filed. In his protest, Mr Simpson states that he was aware of the lack of proper postings during the campaign period, prior to the conclusion of the election. Yet he did not advise either the Local or the Regional Coordinator or the Election Officer. He did not file a protest. Mr Simpson cannot wait until the election is completed to file a protest concerning this alleged pre-election violation. See In Re Barclay 91-Elec App 111.

II. Worksite Lists

Article VIII § 1 of the *Rules* provides that each delegate candidate be given access to collective bargaining agreements covering members of the Local or the Local may provide a list of worksites. Complainants contend that the Local did not comply with this requirement.

The Election Officer Investigation found that on or about November 27, 1990 members of the Working Teamsters reviewed, at the Union office, copies of the collective bargaining agreements covering members of the Local. Many of these agreements did not contain worksite addresses, the National Master Freight Agreement did not include a list of covered employers.

On December 13, 1990 Mr. Simpson raised the issue of obtaining the worksite addresses with Regional Coordinator Christine Mrak. She advised Mr. Simpson that the same problem had arisen in another Local and she would contact him when the Election Officer made a decision. On or about December 20, 1990 Ms. Mrak contacted Mr. Simpson and advised him that the Election Officer had determined that the *Rules* required Locals to provide worksite addresses where such addresses could not be obtained by reviewing the collective bargaining agreements.

Mr. Simpson did not make a request to the Local for a worksite list until January 14, 1991. On that date, he sent a letter to the Local, received by the Local on January 16, 1991. On January 22, 1991 the Local, by Mr. Allison, responded to the request by providing a list of approximately 125 worksites. However, several employers were listed with P O Box addresses, not site addresses; certain multi-site employers did not have all sites listed. At the request of Mr. Simpson the Local sent a corrected list on January 31, 1991.

The protesters contend that 16 worksites where members of Local 305 are employed were omitted or inaccurately listed on the worksite list provided them by the Local Union. Election Officer investigation found that three of the alleged missing worksite addresses were in fact listed, with corrected addresses, on the worksite provided on January 22, 1991. The address of one such worksite, Amco Parking, was also contained in the collective bargaining agreement reviewed by members of the Working Teamsters slate on November 27, 1990. The Election Officer investigation also further found that the Working Teamsters in fact campaigned and/or had campaign literature distributed at another of these three sites, GATX, their literature was posted on bulletin boards at this facility. The third such worksite had only two eligible voters.

Six of the allegedly missing or inaccurate worksite locations were corrected on the January 31, 1991 worksite list provided by Local 305. Members of the Working Teamsters slate were employed by one of these employers, Consolidated Freight, knew the address for both worksites of this employer and campaigned and/or had campaign literature distributed at both locations. The sites of another of these employers, Darigold

Feed, is adjacent to the site of Darigold Consolidated Milk, the milk plant address was properly listed on the January 22, 1991 worksite list. The Working Teamsters slate campaigned and/or had campaign literature distributed at both Darigold locations. The other employers' addresses which were corrected on January 31, 1991 collectively employed 100 members of Local 305.

Of the remaining 7 worksites, the Election Officer investigation found that two of the employers employed no members of Local 305. One employer, General Parks, had relocated from the worksite listed on January 22, 1991 list, a sign was posted at the former location indicating the new address of the new worksite. The addresses of the remaining four employers were all known to members of the Working Teamsters slate or obtained by them, members of Working Teamsters slate campaigned and/or had campaign literature distributed at all such locations.

Based on the foregoing facts, the Election Office does not find that the Local intentionally delayed in providing the worksites list or intentionally supplied erroneous information. Of the numerous worksites employing members of Local 305 all but 13 were correctly listed on the worksite list provided on January 22, 1991. Corrected addresses were provided for six employers on January 31, 1991, two weeks prior to the in-person election date. Two of the remaining employers employed no members of Local 305, one of the remaining employers recently moved. Moreover, the Working Teamsters campaigned and/or had campaign literature distributed at all other worksites for which they claim correct addresses had never been given.

Further, although Mr Simpson complains of delay by the Local, he waited for at least three weeks to request the list, after being notified by Ms Mrak that he was entitled to do so. In addition, no protest was filed prior to the conclusion of the election. The alleged improprieties in such list were known, or should have been known, prior to the election date. The protest is untimely. See In Re Barclay, 91-Elec App -111. For all these reasons, the Election Officer determines that the *Rules* regarding access to worksite information were not violated.¹

III. Mailing Labels

Article VIII, § 6(e) of the *Rules* requires that a Local, in complying with requests for mailings, use the current names and addresses for all members in good standing. On January 16, 1991 Mr Simpson requested that Local 305 mail his campaign literature to all Local members, his targeted mail date was February 1, 1991. The Local

¹Further, even assuming a violation, it cannot be reasonably concluded that such violation may have affected the results of the election. All but six addresses were corrected two weeks before the date any ballots were cast. Of the remaining six sites, two employed no Local 305 members, the address of the third could have been obtained by visiting the worksite address listed and the Working Teamster slate campaigned at the other three locations. Further, the Working Teamsters slate mailed campaign literature to all Local 305 members employed at these sites.

completed printing the mailing labels on January 24, 1991. On January 30, 1991 the Local advised the Regional Coordinator that approximately 700 members who were seasonal employees were not included in the Local's TITAN records and thus were not included on the Local's mailing list or on the label's prepared for Mr Simpson²

On the same date, the Local offered to provide the additional mailing labels to Mr Simpson but he declined the offer. Mr Allison states that Mr Simpson inquired whether the Allison Slate was sending literature to the seasonals and Mr Allison responded in the negative. Mr Simpson contends that the offer of the additional labels came too late because of the additional expense. No pre-election protest was filed by Mr Simpson about his mailing or the omission of mailing labels for 700 members.

The Election Officer determines that the violation, if any, of the *Rules* by the omission of address labels for 700 members, was appropriately and timely remedied. The Local immediately notified Mr Simpson when it discovered the error and offered to provide the additional labels. The offer was made prior to Mr Simpson's targeted mailing date.

Further, Mr Simpson knew of this problem no later than January 30, 1991. No protest was filed until after the conclusion of the election. The protest is untimely. See In re. Barclay, 91-Elec App -111 (SA). The Election Officer determines that the *Rules* have not been violated.

IV. Allison Slate Campaign Literature/Removal of Campaign Literature.

Complainants contend that the campaign materials of the Allison Slate improperly contain an endorsement by the Executive Board. They further allege that the literature is misleading because it states that elected delegates will have responsibility for issues affecting the daily operation of the Local.

The *Rules* prohibit censorship of campaign material. The purpose of the *Rules* is to encourage all candidates to freely communicate their views or refute those of opposing candidates. The literature of the Allison Slate is clearly campaign material. The literature could not realistically be viewed as an official Union communication or an official Union endorsement of the Allison Slate. Candidates are not prohibited from noting their Union office on their campaign literature, all members of the Allison Slate but one are members of the Local's Executive Board. Candidates are permitted to communicate their views in their literature including their opinions as to the function of a delegate. Thus, the campaign literature distributed by the Allison Slate does not violate the *Rules*.

The protestors also contend that Working Teamster Slate literature was removed from bulletin boards. The protestors provided no evidence about the identity of the

²The omission was discovered when records were being reviewed and updated to assist in preparing the election roster.

individuals who purportedly removed such literature The Election Officer investigation found no evidence suggesting that any Local Union official and/or Allison Slate member removed or directed the removal of the literature Thus, the Election Officer finds no violation of the *Rules*

V. Campaigning on Union Time

The protesters contend that Union officials were campaigning at worksites on Union time in violation of the *Rules* The Election Officer investigation revealed that Tony Andrews, President of the Local and a candidate for delegate, was observed speaking to members and handing out campaign materials for a ten minute period at Vehicle Processors, an employer of Local 305 members Mr Andrews stated that he was at Vehicle for a meeting with the Vehicle stewards and responded, when asked, to members' questions about the election He denies handing out any campaign materials One of the members with whom Mr Andrews spoke, stated that the conversation lasted a only few minutes and was generally concerned with questions about her upcoming maternity leave No other evidence of Union officers campaigning on work time was presented

The *Rules* prohibit campaigning while on Union time unless it is incidental to Union business Based on the facts recited above, the Election Officer finds that the campaign activity in which Mr Andrews engaged at Vehicle Processors was incidental and therefore did not violate the *Rules*.

VI. The *Rules* Violations Noted Above Did Not Affect the Outcome of the Election

This protest is a post-election protest The violations found to have occurred will only be remedied if the violation may have affected the outcome of this election *Rules*, Article XI, § 1(b)(2)

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. Local Unions 410, 410A, 410B & 410C, International Union of Operating Engineers, 366 F 2d 438 (2nd Cir 1966) To determine whether an effect exists, the Election Officer determines whether 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 the results or outcome of the election Dole v Mailhandlers, Local 317, 132 LRRM 2299 (D C M D Alabama 1989)

As discussed above the Election Officer has determined that the failure to provide 216 seasonal members with the notice of the nominations meeting and the notice of the election is a violation of the *Rules* However, the election results for this election show that the margin between the sixth and seventh ranked delegate candidates, between the winning candidate with the least number of votes and the losing candidate with the greatest number of votes, was 221 votes The votes of the 216 members who did not receive notice of the election could not have changed the election results Further,

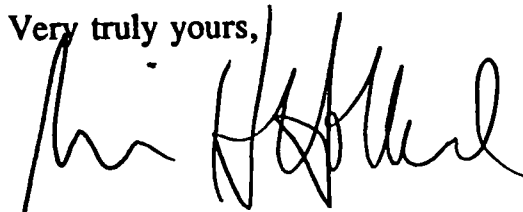
John G Simpson
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review of the TITAN records of these 216 members reveals that 95 of them were ineligible to vote due to dues delinquencies. One hundred and twenty-one votes would have had no impact on this election. Thus, the violation of the *Rules* with respect to providing notice did not affect the outcome of the election.

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/mjv

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