

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
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April 4, 1991

VIA UPS OVERNIGHT

Lee Nelson
8927 Sonoma Valley Way
Sacramento, CA 95829

Al Goodson
19 Pina Street
Sacramento, CA 95823

Thomas R. Cota
c/o Teamsters for Carey
7120 East Parkway
Sacramento, CA 95823

Bill S. Morrissey
144 Morning Side Dr.
San Anselmo, CA 94960

Richard Henry
Secretary-Treasurer
IBT Local Union 150
7120 East Parkway
Sacramento, CA 95823

John Polozzo
5721 27th Ave
Sacramento, CA 95820

Steve Ryan
c/o Team Excellence
7120 East Parkway
Sacramento, CA 95823

Tony Gambardella
2710 Associated Rd C74
Fullerton, CA 92635

Re: Election Office Case No. Post-25-LU150-CCV

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 Lee Nelson, Al Goodson and John Polozzo, all of whom are candidates for delegate from Local Union 150. Complainants contend that campaign literature mailed by the "Teamsters for Carey Slate" violated the *Rules* prohibiting endorsement by the Local Union of any candidates. Article X, § 1 (b)(3) of the *Rules*. Complainants also allege that the members of the Slate used a mailing list available to the Teamsters for a Democratic Union (TDU) which was not made available to other candidates running for delegate from that Local.

Local Union 150 held its election on February 7, 1991. The Local was entitled to elect 8 delegates and 2 alternate delegates to the IBT International Convention. There

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April 9, 1991

VIA UPS OVERNIGHT

Gary Rowlett
c/o Slate for Ron Carey
142 Martin Dairy Rd
Milner, GA 30257

Jerry Cook
President
IBT Local Union 528
c/o Slate for Unity
643 Spence Lane
Nashville, TN 37207

Jeff James
140 Bent Creek Dr.
Giffin, GA 30223

Robert L. Branch
150 Plantation Rd.
Fayetteville, GA 30214

Re: Election Office Case No. Post-29-LU528-SEC

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 Davis as counsel for Gary Rowlett, Calvin Harper and the "Gary Rowlett & Slate for Ron Carey" candidates for delegate and alternate delegate from Local 528. The post-election protest, dated February 19, 1991, alleges that the pre-election conduct of an employer, Super Value Warehouse, which the Election Officer determined was a violation of the *Rules* pursuant to a decision dated February 18, 1991 (Election Office Case No. P-378-LU528-SEC), affected the outcome of the election.

By letter dated February 21, 1991, Ms. Davis supplemented the post-election protest alleging that she had learned that approximately 300 - 400 IBT members were employed by Super Value Warehouse which constituted approximately one-half of the membership who cast valid ballots. Thus she contends that the failure of Super Value Warehouse to provide access clearly may have affected the outcome of the election. The February 21, 1991 letter also alleged that many members of the Local did not receive ballots or received ballots shortly before the election, thereby preventing them from casting a vote. By letter dated February 25, 1991, Ms. Davis filed an additional supplement to the post-election protest contending that the ballots for the Local 528 delegate and alternate delegate election were inaccurate in that Jeff James, who was nominated as a candidate for alternate delegate, was listed on the ballot as a candidate

for delegate and that another alternate delegate candidate, named on the ballot as Robert L Branch was in actuality Raymond L Branch. Ms Davis contends that all of the above alleged violations require that the election be rerun.

The Local 528 delegate election was held exclusively by mail ballot. The count of the ballots took place on January 30, 1991. The tally was as follows:

JERRY COOK SLATE FOR UNITY

For Delegate

Otis Gresham	493
Jerry Cook	492
Larry C. Ragsdale	490
Ed Flournoy	483
Charles Perdue	482
H C Gober	482

For Alternate Delegate

Wade Allen	479
Tom Washam	478
Don Toney	476

INDEPENDENTS

For Delegate	Jeff James	23
For Alternate Delegate	Robert L Branch	24

**GARY ROWLETT & SLATE
FOR RON CAREY**

For Delegate

Gary E Rowlett	377
Kenneth Lanham	376
P W Hamby	375
Calvin L Harper	375
John Andy Shaffer	369
Darrell Emily	367

For Alternate Delegate

William Darsey	376
Will B Stinson	367
Alvin Bode	367

The Local was entitled to elect six delegates and three alternate delegates to the 1991 IBT International Convention. As indicated by the tally, the vote margin between the sixth ranked delegate candidate and the seventh ranked delegate candidate, Gary Rowlett, was 105 votes. The margin between the third ranked alternate delegate candidate and the fourth ranked alternate delegate candidate was 100 votes. Based upon the allegations contained in the protest, the outcome of the election may have been affected by the alleged violations and therefore the Election Officer has investigated the protest.¹

¹Article XI, § 1 (b)(1)(a) of the *Rules* requires that post-election protests be filed within 72 hours of the posting of the official election tally sheet. As noted above, these post-election protests were filed past the time period specified in the *Rules*. The first protest filed, letter dated February 19, 1991, concerns an Election Officer determination made on February 15, 1991 from which an appeal was taken by the complainant, Gary

Complainants herein filed a pre-election protest on January 23, 1991 alleging that an employer of Local 528 members, Super Value Warehouse, interfered with their rights to campaign on its premises and denied them access to the Local 528 membership employed by them. The conduct of the employer occurred on January 22, 1991 when Mr Harper, a candidate for delegate on the "Carey Slate" was distributing campaign materials at the entrance to the Super Value parking lot and was instructed to leave. By letter dated February 15, 1991, the Election Officer determined that the actions of Super Value interfered with the exercise of Mr Harper's rights guaranteed by the *Rules* and provided a remedy requiring Super Value to allow such access in future elections conducted pursuant to the *Rules*. Complainants contend that the violation of the *Rules* as found by the Election Officer affected the outcome of the election, the determination not having been made until after the election, and therefore the election should be overturned and a rerun directed

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. Thus, a violation of the *Rules* alone 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 the result 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 Super Value Warehouse, an employer of IBT members, the issue thus becomes whether said violation affects the outcome of the election. For the reasons set forth below, the Election Officer determines that it did not

The investigation conducted by representatives of the Election Officer revealed that at the time of the election Super Value warehouse employed 177 IBT members who were eligible to vote, not 300 - 400 as alleged by Complainants. 38 of those members, or 21%, did vote. The rate of ballot return for the Local in general was 24%, that is, out of 4,839 members who were mailed ballots, 1,155 ballots were cast

Complainants base their argument for rerun on the premise that all of the IBT members employed by Super Value would have voted and that the 38 who did vote may have voted differently, assuming those votes were not cast for the Carey Slate. Based upon the rate of return of cast ballots throughout the Local, that premise is not a reasonable one

Rowlett, and was withdrawn on the basis that it would be refiled as a post-election protest. In connection with the additional allegations made, it is noted that these allegations were clearly filed outside the relevant time period

Twenty-four percent of the members of Local 528 voted. Applying the average 24% voter return rate to the eligible IBT member voters employed at Super Value, it is improbable that the number of cast ballots from that work location, regardless of campaign access, would have been in excess of 43, an insufficient number to affect the outcome of the delegate or alternate delegate election.

Some work locations within the Local had a higher percentage of voter response and some lower. For example, at Mr. Rowlett's work location, where obviously he had the greatest access to engage in campaign activities, 41% of the eligible voters cast a ballot. Even assuming that the voter return at Super Value would have been comparable to the total vote return for Mr. Rowlett's own work location, only 73 votes would have been cast, a number insufficient to affect the outcome of the election. Therefore, the Election Officer determines that the violation of the *Rules* by Super Value Warehouse as found by the Election Officer in P-378-LU528-SEC, did not affect the outcome of the delegate or alternate delegate election.

Complainants further contend that many members of the Local did not receive ballots or received ballots too late to return the ballot. No evidence is presented by Complainants as to the number of members who did not receive ballots or received ballots too late to return them, other than an allegation that forty ballots were returned by the Post Office and had to be remailed. There is no evidence that these members did not receive their ballots in time to cast their vote. All members of Local 528 were advised by the notice of election of the dates of the election and the procedure to be followed in the event a mail ballot was not received. Thirty-six members contacted the Election Officer to request a ballot, all such members were timely mailed a second ballot.

On January 18, 1991, the Regional Coordinator was made aware of a possible problem with the receipt of ballots by members of the Local located in northern Florida and southern Georgia. This problem was discussed with a representative of the two slates on that date. On January 19, 1991, Mr. Cook for the Unity Slate and Mr. Rowlett for the Carey Slate agreed that an additional mailing should be made to members residing in northern Florida and southern Georgia to cure the problem. Upon inquiry of the Regional Coordinator as to whether a complete new ballot mailing with a later return date for voted ballots would be preferable, both slate representatives stated that a complete new mailing was not desired. On January 22, 1991, pursuant to the agreement made, ballots were remailed to 524 members identified as residing in the two affected regions. The January 22 mailing date was 8 days before the election, a sufficient time for the receipt and return of the ballots by the date due.

Based on the foregoing, the Election Officer concludes that no violation or deviation of the *Rules* occurred in connection with the mailing of the ballots to Local 528 members.

Complainants also allege that errors in the ballot, specifically the listing of Jeff James as a candidate for delegate rather than alternate delegate and the identification of

alternate delegate Raymond Branch as Robert Branch, violated the *Rules* and may have affected the outcome of the election. To address the latter complaint first, the Election Officer notes that there is no evidence to suggest that the candidate named Robert Branch was not the candidate nominated for alternate delegate.

The Regional Coordinator designee who was present at the nominations meeting notes that the nomination was for Robert Branch. The results of the nominations meeting which was posted by the Local shortly after the nominations meeting held on December 15, 1990, lists the candidate as Robert Branch. Clearly, the ballots listed the candidate as Robert Branch. No objection was made by any member, including Mr. Branch, that the wrong name was being used for this alternate delegate candidate until receipt of the second supplement to the post-election protest on February 25, 1991. Thus, the protest was not timely under Article XI of the *Rules*. Further, the Election Officer does not find that the *Rules* have been violated by the designation of an alternate delegate as Robert Branch on the ballot, the Election Officer finding that that is the name of the person who was nominated for alternate delegate.²

The investigation of the Election Officer has revealed that Jeff James was indeed nominated as a candidate for alternate delegate and not for delegate as Mr. James is designated on the ballot. The notice of the nominations meeting results also incorrectly lists Jeff James as a candidate for delegate. No objections or protests were filed with either the Election Officer or the Regional Coordinator concerning this error, either after the posting of the nominations results or upon receipt of the ballots. The first voiced complaint was made to the Regional Coordinator on the date of the count. No protest was filed until the second supplement to the post-election protest dated February 25, 1991.

The Election Officer notes that this protest is not timely under Article XI of the *Rules*. The violation, if any, was known at the time the ballots were received. No protest was filed at that time. Even if the matter were considered a post-election protest, no such protest was filed until nearly a full month after the ballot count.

Further, the Election Officer finds that the inclusion of Mr. James on the ballot as a delegate candidate did not affect the outcome of the election. According to the tally of ballots, Mr. James received 23 votes. A review of all void ballots reveals that only 27, not 286 as alleged in the supplement to the post-election protest filed by Complainant, were void because the voter had voted for too many candidates. Only five of these 27 were ballots where the member had voted for James plus 6 or more other delegate candidates, that is, the voter had overvoted when voting for James. Of those five, three ballots contained votes for members of the Rowlett Slate. Therefore, the Rowlett Slate may have been adversely affected by no more than 26 votes by the placement of Mr. James on the ballot as a delegate rather than an alternate delegate.

²Mr. Branch provided his social security number at the nominations meeting. The only Branch with that social security number reflected on the TITAN records is listed as R. L. Branch.

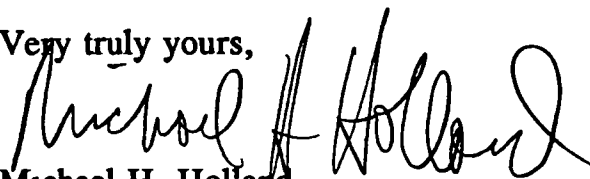
Gary Rowlett
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twenty-three votes that Mr James received plus the additional three votes "lost" where members overvoted by voting for James

These twenty-six votes do not affect the outcome of the delegate election since Mr Rowlett, the losing candidate with the highest vote total, lost by 105 votes. Even adding these 26 votes to the maximum 73 votes affected due to the *Rules* violation found in P-378-LU528-SEC is insufficient to affect the outcome of the election. Accordingly, the 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 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/mca

cc Frederick B Lacey, Independent Administrator
Donald H Williams, Regional Coordinator

Susan Davis
Cohen, Weiss & Simon