



OFFICE OF THE ELECTION OFFICER  
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
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Washington, DC 20001

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Election Officer

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April 19, 1991

**VIA UPS OVERNIGHT**

Vincent McGee  
c/o The Independent Slate  
Gover Road  
Millbury, MA 01527

Ernest R. Tusino  
Secretary-Treasurer  
c/o The Rank & File Slate  
IBT Local Union 170  
805 Millbury Street  
Worcester, MA 01420

**Re: Election Office Case No. Post-37-LU170-ENG**

Gentlemen:

A post-election protest was filed pursuant to Article XI, § 1 (b) of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Vincent McGee, an unsuccessful candidate for delegate to the IBT International Convention from Local 170. The protest alleges that members were disenfranchised based upon the following facts concerning the mailing and collecting of mail ballots:

- (1) Approximately 300 to 400 members contacted the Local Union hall to report that they did not receive ballots;
- (2) There was a 300 ballot discrepancy between of the number of ballots received by the Election Officer Representative and the number of pieces of mail charged to the Election Officer by the Post Office,
- (3) Approximately 4600 ballots were mailed by the Election Officer Representative, while Local 170 pays per capita tax to the International for only 3800 members, and
- (4) The level of voter participation in the delegate election was lower than the lever of membership participation in the recent Local Union officer election as well as the recent contract ratification vote with respect to the new UPS collective bargaining agreement.

Local 170 held its delegate election on February 24, 1991. The Local elected six delegates to the 1991 IBT International Convention. The election was conducted exclusively by mail ballot. Eight candidates were on the ballot for the six delegate positions, eight candidates were on the ballot for the five alternate delegate positions, respectively. The tally of ballots was as follows:

Delegate Candidates

Ernest "Ernie" Tusino	1070
Carl Gentile	933
Richard "Dick" Foley	985
Bill Miley	1064
Harold "Eddy" Barry	921
George C. Valery	974
Vincent McGee	585
Thomas A. "Tom" Gosse	558

Alternate Delegate Candidates

Albert "Al" Stearns	889
George R. Valery	874
Matty DeSalvio	807
Frederick "Buzz" Barry	886
Frank G. Beshai	703
Wayne L. Boraccini	471
Victor F. "Vic" Bishop	641
Colin M. Proctor	450

The margin between the sixth and seventh ranked delegate candidate, Mr. Barry and Mr. McGee respectively, was 336 votes. The margin between the fifth and sixth ranked alternate delegate candidates was 62 votes.

The protest filed by Mr McGee concerns the accuracy of the mail ballot process suggesting that due to the facts as alleged in the protest members were either not given the opportunity to vote or their votes were not counted. The investigation conducted by the Election officer has revealed that there is no evidence to suggest that the election was not conducted as contemplated and required by the *Rules*.

**I. The Number of Ballots Received at the Post Office**

In order to be counted, ballots were due to be returned to the designated post office box on February 24, 1991 by 12 00 noon. On February 24, 1991 Regional Coordinator Elizabeth Rodgers went to the main Post Office in Worcester, Massachusetts to pick up the ballots. The Post Office employee released the ballots to the Regional Coordinator. When the Post Office employee gave Ms. Rodgers the ballots, he informed her that 1399 pieces of mail, i.e. ballots, had been returned. The Post Office also gave Ms Rodgers a bill for the postage totalling \$540 50. Under the business reply envelope permit the postage for each ballot cost \$0 38. \$540 50 represents the postage due for 1399 pieces of mail.

When Ms Rodgers arrived at the counting site, she informed the observers that the Post Office reported that 1399 ballots had been returned. The Election Officer staff persons then counted the ballots twice. The Election Office count established that 1832 ballots had actually been received and retrieved by Ms Rogers.

Mr. McGee alleges that the discrepancy between the number of ballots actually received by Regional Coordinator Elizabeth Rodgers and the number of ballots the post office stated had been received indicates an irregularity in the post office's handling of the ballots. The Regional Coordinator has contacted the post office to determine the reason for the discrepancy. The post office indicates that the bill presented on February 24, 1991 did not include all mail collected up to the date of the count but only included the charges processed through the billing office as of February 24, 1991; the billing office is always behind in processing.

There is no evidence that ballots were lost by the post office or not given to the Regional Coordinator. The number of ballots received was greater than the number billed. There is no evidence to indicate that any ballots were mishandled at the post office nor there any evidence of fraud on the part of the Post Office or any persons associated with the Post Office.

Further, observers were present when the ballots were transported from the post office to the counting site. There is no allegation or evidence that the Regional Coordinator added fraudulent ballots to the ones she picked up at the post office. Thus, the Election Officer determines that the alleged discrepancy in the number of ballots does not support a finding that the *Rules* have been violated.

Mr McGee also alleges that the mailing list used by the Region Coordinator to

mail the mail ballots was inaccurate because many members did not receive ballots. In support of his allegation, Mr. McGee asserts that he was advised by a Local official that 300 to 400 members called 170's offices to report they had not received ballots

The Election Officer Investigation found no evidence to support Mr. McGee's allegation. The Election Office representative has contacted employees of Local 170 to inquire if numerous requests for mail ballots had been received. The Local Union advised that it did not receive more than a few requests for ballots. When such requests were received, the office of the Regional Coordinator received 65 requests for additional ballots from members. All of the members who requested ballots were mailed ballots. The Notice of Election advises members who do not receive ballots to contact the office of the Regional Coordinator and 65 members did so. There is no evidence that other Local 170 members did not receive their ballots.

Mr McGee alleges that the number of ballots mailed by the Election Office representative exceeded the number of members in Local 170. The Regional Coordinator mailed, on February 5, 1991, 4678 ballots for the Local 170 delegate and alternate delegate elections. Mr. McGee contends that there are only 3800 members of the Local.<sup>1</sup> Thus he claims that the number of ballots mailed must be inaccurate.

It has been the consistent policy of the Election Officer to use a mailing roster for, and thus mail ballots to, members who are not only presently active members in good standing but also to members who are new applicants for membership, not active due to recent layoff or discharge, in arrears in dues, and the like. 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. A second and more limited roster is used on the date of the election. Thus, it is not a violation of the *Rules* for ballots to have been mailed to members for whom the Local is not paying per capita tax. These members not being in "good standing" at the time the ballots are mailed might be eligible to vote at the time of the election. There is no allegation or evidence that the vote of any ineligible member was counted

Mr McGee states that the level of voter participation in Local 170's delegate and alternate delegate election lends support to his allegations that members did not receive ballots. 1832 ballots were cast in local 170's delegate election which represents a voter response of approximately 40 percent.<sup>2</sup> Mr McGee alleges that the percentage of voter turnout is much less than voter turnout in a recent Local Union officer election or participation in the recent ratification vote on the UPS contract. The fact that voter participation was higher in the Local Union officer election, and in the contract ratification vote, can be attributed to a multitude of reasons, none of which would

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<sup>1</sup>Mr McGee bases his membership estimate on the fact that Local 170 is currently paying a per capita tax to the IBT for 3800 members.

<sup>2</sup>This percentage is consistent with, in fact slightly higher than, the ballot return from Locals of similar size in the same region, which is an average 37% return.

indicate any improprieties in the way mail balloting was conducted for this election.

Members clearly have a different interest in the results of a contract ratification vote than a delegate election. The terms of the collective bargaining agreement which set forth the wages and fringe benefits the member will receive for his labor affects members directly and continuously. Collective bargaining ratification votes normally elicit a larger turnout than intra-Union political elections.

Similarly, dependent upon the issues or the candidates, a Local Union officer election may have a larger turnout than a convention delegate election. Local Union officers have a three year term. Local Union officers govern the day to day operation of the Union and have responsibilities for grievance handling, contract negotiation, use of dues money, and the like. Delegates serve for only one week. And with respect to the officers of the IBT, the delegates only nominate; the members themselves will elect.

Mr McGee has no evidence to support his allegations, but merely surmises that the lower delegate and alternate delegate election voter turnout must have been caused by some irregularities in the mail balloting procedure. No evidence is found to support such conjecture.

#### V. Conclusion

Based on the foregoing, the Election Officer determines that there is no evidence to support Mr. McGee's allegations of voting irregularities. Moreover the investigation conducted by the election officer did not disclose any evidence of any activity in connection with the ballots which would constitute a violation of the *Rules*. 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

Vincent McGee  
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MHH/mjv

cc Frederick B Lacey, Independent Administrator  
Elizabeth A Rodgers, Regional Coordinator

170/ENG  
X MHH  
BTJ  
JS

IN RE:

VINCENT MCGEE  
and  
ERNEST R. TUSINO  
and  
IBT LOCAL UNION NO. 170

91 - Elec. App. - 138 (SA)

DECISION OF THE  
INDEPENDENT  
ADMINISTRATOR

APR 30 1991

This matter arises out of an appeal from a Decision of the Election Officer in Case No. ~~91-138 (SA)~~. A hearing was held before me by way of telephone conference on April 29, 1991, at which the following persons were heard: the complainant, Vincent McGee; Ernest Tusino, Secretary-Treasurer of the Local 170; Elizabeth Rodgers, the Regional Coordinator; and John Sullivan and Barbara Hillman on behalf of the Election Officer.

Local 170 held its election for six delegates and five alternate delegates to the IBT Convention by mail ballot. On February 5, 1991, 4,678 ballots were mailed to Local 170 members along with a notice that the ballots were to be returned to the post office by noon on February 24, 1991. The margin of victory between the winning delegate with the lowest number of votes (Harold Barry with 921 votes), and the losing candidate with the



most votes (Vincent McGee with 585 votes), was 336 votes. In addition, the margin of victory between the winning alternate with the lowest number of votes and the losing candidate for alternate with the most votes was 62 votes.

Mr. McGee challenges the election results on the basis of perceived deficiencies in the ballot mailing, collection and counting processes.

Mr. McGee's chief complaint is that the Election Officer mailed 4,678 ballots to members when in fact the Local's actual membership is smaller -- approximately 3,800. In making this argument, it is clear that Mr. McGee fails to understand the process used by the Election Office in mailing out ballots for the delegate elections around the country. As stated by the Election Officer in his Summary (p.6, ¶17-20):

The Election Officer has had occasion to describe that process, and to uphold it, in a previous decision issued in Kelder and Yellow Freight System, Inc., Election No. Post-23-LU707-NYC (affirmed 91 - Elec. App. - 129 (SA)). As discussed in that decision, 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 new, laid off, or in arrears in their dues payments. This mailing includes individuals who are not necessarily members in good standing entitled to vote in this election. This mailing may also include members who are not currently paying union dues, having been recently laid off, discharged, or placed on withdrawal.

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

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 evidence or allegation that the votes of ineligible members were improperly counted by the Election Office. Accordingly, the fact that such members may have received ballots is immaterial to the results of the election.

For the reasons stated by the Election Officer, no violation of the Rules for the IBT International Union Delegate and Officer Election (the "Election Rules") occurred because the Election Officer may have mailed more ballots than there were eligible members.

Mr. McGee also suggests that some 300 to 400 members did not receive ballots. This claim is unsubstantiated. The Regional Coordinator was contacted by 65 members who stated they did not receive ballots. These members were promptly sent ballots. The request by these 65 members is completely consistent with the election notice which was posted at Local 170 worksites. That notice clearly informs the members that if they do not receive a ballot by a designated date, they are to contact the Election Office. In addition, the Election Rules provide that members not receiving ballots should contact the Election Officer or his representative. Election Rules Art. XII, §3.c. The Election Officer's investigation did not suggest that the number of members

not receiving ballots was any larger than the 65 who requested ballots.<sup>1</sup>

Mr. McGee suggests that the low voter turnout supports his claim that large numbers of members did not receive ballots. The ballot return rate in Local 170 was approximately 40 percent. As the Election Officer notes, this return rate is comparable (in fact slightly larger), than the return rate of Locals of similar size in the same region. Election Officer Summary, p. 6, ¶14. Mr. McGee claims that Local 170 has a traditionally high voter turnout, and, in fact, in the last Local Union officer election, the voter turnout was much larger than 40 percent. While the Election Officer and the Independent Administrator have looked to voter turnout in past Local Union officer elections when the circumstances warranted, neither the Election Officer nor the Independent Administrator is bound by voter turnout in past elections. I agree with the Election Officer when he states that he "declines to share Mr. McGee's assumption that a Local Union officer election is directly comparable to the current delegate election." *Id.* at p. 5, ¶13

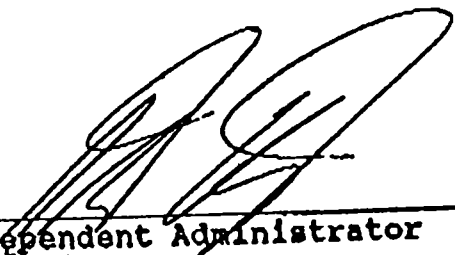
Lastly, Mr. McGee points to certain perceived irregularities in the handling of the ballots by the post office. Apparently, on February 24, 1991, the Regional Coordinator retrieved 1,832

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<sup>1</sup> It is worth noting that the number of members that Mr. McGee claims did not receive ballots happens to coincide with the number of votes Mr. McGee needed to close the gap between himself and the last delegate elected.

ballots from the post office, but was only billed for postage on 1,399. Mr. McGee points to this discrepancy as an example of the irregularities in the post office's processing of the ballots. The difference between the number of ballots picked up and the amount billed is easily explained. The amount charged on February 24, 1991, only included ballots processed through February 14, 1991. It was an incomplete bill. The Election Officer's investigation found no other irregularities in the ballot collection process.

Accordingly, the decision of the Election Officer denying Mr. McGee's protest is affirmed.



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

Dated: April 30, 1991