



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

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April 17, 1991

**VIA UPS OVERNIGHT**

Andrew A. Kohr, Jr.  
220 N. Enola Drive  
Enola, PA 17025

Thomas B. Griffith  
President  
IBT Local Union 776  
c/o Teamsters for  
Teamsters Slate  
2552 Jefferson St  
Harrisburg, PA 17110

Todd A. Richwine  
c/o Andrew Kohr/T U F F  
Slate  
90 Eagle La  
Etters, PA 17319

Ron Fike  
c/o Ron Fike's Teamsters  
for Equality Slate  
Rd #3, Box 106  
Millerstown, PA 17062

Re: Election Office Case No. Post-38-LU776-PHL

Gentlemen.

Local Union 776 held its delegate election on March 1, 1991. Todd A. Richwine and Andrew Kohr, both candidates for delegate on the Andrew Kohr/T U F F Slate, filed a post-election protest pursuant to Article XI, § 1 of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules"). Mr. Richwine and Mr. Kohr both complain that the campaign literature distributed by a member of an opposing slate contained misleading and untruthful statements about them and thus was violative of the *Rules*. Both complainants also allege that their campaign was harmed by the late mailing of the ballots. The notice of election indicated that the ballots would be mailed on or about January 23, 1991 while the ballots were not mailed until February of 1991. Mr. Richwine also complains that the name of his slate was improperly designated on the ballot by the omission of Andrew Kohr's name prior to the slate name. Finally, Mr. Kohr contends that he requested from the Local Union a list of stewards' names and a worksite lists which was not provided by the Local Union, thus, he alleges a violation of the *Rules*.

Local 776 held its delegate election by mail ballot exclusively. The Local was required to elect seven delegates and six alternate delegates to the IBT International

Convention The ballots were counted on March 1, 1991 The tally of valid ballots cast was as follows

**FOR DELEGATE**

Teamsters for Teamsters Slate

Dale M Crum	1049
Thomas B Griffith	983
George Smart, Sr.	961
Charles Leo Deaner	944
Charles Shughard	938
John Fogle II	928
Ronald P Rife	912

T.U.F.F. Slate

Andrew Kohr, Jr	696
Todd Ridiwine	622
Jim Warnick	604
Ed Keefer	568
Joe Ney	552
Jerry Young	552
Pete Muppín	613

Ron Fike's Teamsters For Equality Slate

Ron Fike	357
Rich Webber	328
Jim Haskell	284
Richard Hoffner	280
Donald Lyons	266
Ed Rowe	265
Richard Griffin	261

Independent Candidates

Lenny Radle	69
Bud Hossner	50
Dave Tomaszewski	46

**FOR ALTERNATE DELEGATE**

Teamsters for Teamsters Slate

Daniel Virtue	972
Russell Stepp	960
Thomas Vinson	953
Carlos Ramos II	927
Richard Brown, Sr	921
Terry King	919

T.U.F.F. Slate

Ken Hammaker	688
Leroy Lindsey	685
Don Long	665
Ray Snyder	647
Roy Lockett	632
Vinnie Ramirez	561

Ron Fike's Teamsters For Equality Slate

Harry Baker	359
Tom Fernbaugh	234
Larry Nornhold	292

As indicated by the tally, the margin between the seventh ranked delegate candidate and the eighth ranked delegate candidate, Andrew Kohr, was 216 votes. The margin between the sixth ranked alternate delegate candidate and the seventh ranked alternate delegate candidate is 231 votes

Although the margin between the successful and unsuccessful candidates is relatively large, based on the alleged violations as set forth by the complainants in their protests, the Election Officer has conducted an investigation pursuant to Article XI, § 1 (b)(1) of the *Rules*, to determine whether the violations alleged may have affected the outcome of the election. The investigation was completed by a representative of the Regional Coordinator. Based upon that investigation and the *Rules*, the Election Officer determines that the *Rules* have not been violated for the reasons set forth below

**I. Alleged Delay in the Mailing of the Ballots.**

An election notice was mailed to the general membership of the Local on December 21, 1990, indicating that the ballots would be mailed on or about January 23, 1991. Both Mr. Richwine and Mr. Kohr have acknowledged that a representative of the Election Officer, Adjunct Coordinator Julius Uehlin, notified them that if the eligibility of nominated candidates was challenged, the challenges would have to be determined prior to the printing and mailing of the ballots. Indeed, the eligibility of both Mr. Richwine and Mr. Kohr was challenged by Thomas Griffith (Election Office Case No. E-214-LU776-PHL) and complainants herein were advised of the filing of the protest as to their eligibility by letter from the Election Officer dated January 16, 1991, sent via UPS Overnight delivery. The determination by the Election Officer in Case No. E-214-LU776-PHL as to the challenges was made by letter dated February 1, 1991. Once again, both complainants were served with a copy of the letter via UPS Overnight delivery. The ballots were printed and mailed thereafter.

Complainants contend that they mailed their campaign literature in reliance upon the January 23, 1991 proposed mailing date so that it would arrive with or close to the arrival of the ballots. As noted above, the complainants should have been aware prior to the mailing of their campaign literature that the ballots would not be mailed on or about January 23, 1991. Even assuming that the complainants were not so aware, it is clear that they did in fact accomplish a mailing to all members prior to those members casting a vote. The Election Officer does not find that the delay between the mailing of the campaign literature by the T U F F Slate and the mailing of the ballots would have affected the outcome of the election since the T U F F Slate was able to communicate with all members prior to the time all such members voted.

**II. The Campaign Literature of the Teamsters for Teamsters Slate.**

Mr. Richwine and Mr. Kohr both complain that campaign literature distributed by Leo Deaner, a candidate on the Teamsters for Teamsters Slate, contained untrue and misleading statements about the complainants. The investigation conducted by the Election Officer has revealed that said campaign literature was distributed to IBT members employed by Carolina Freight at its Carlisle location, where approximately 700 members of the Local are employed.

The model for free and fair Union elections is that of partisan political elections. In those elections, contestants are generally allowed to make whatever assertions, allegations, statements of opinion or even of alleged facts without legal sanctions for their truth or falseness. The cardinal principle is that the best remedy for untrue speech is more free speech, with the electorate being the final arbiter. As long as the literature in question did not purport to be the official voice of the organization, as opposed to being the opinions of the candidates who may be officers, inquiry will not generally be made as to its truth or falseness. A review of the campaign literature in question clearly establishes that the literature does not purport to be the official voice of the Local Union and is identified as the literature of the Teamsters for Teamsters Slate.

Thus, the fact that campaign statements are allegedly false, irrelevant or even defamatory does not remove them from the protection of the *Rules*. National Association of Letter Carriers v. Austin, 418 U S 264 (1974) (uninhibited and robust debate encouraged in labor matters, even allegedly defamatory statements permitted); Salzhandler v. Caputo, 316 F 2d 445 (2nd Cir 1963) (statements critical of Union officials, even if incorrect, protected). The policy of encouraging robust debate in the selection of delegates of the IBT is reflected in the *Rules*' prohibition of censorship of campaign literature. *Rules*, Article VII, § 6 (g). Thus, the campaign literature distributed by the Teamsters for Teamsters Slate does not violate the *Rules*.

### III. The Omission of Andrew Kohr's Name from the Slate Name on the Ballot.

Mr Richwine alleges that the proper name of the T.U F F Slate is Andrew Kohr/T U F F. Ticket. Mr Richwine further contends that the other two slates had the name of the slate leader in the slate name on the ballot and thus the T.U F F. Slate was unfairly disadvantaged by the omission of Mr Kohr's name.

The investigation revealed that all candidates or representatives of slates were provided the opportunity to review the proof of the ballot. Investigation further revealed that Mr Kohr did so. Indeed, he made some changes on the ballot with respect to his slate on February 11, 1991. He then approved the ballot as changed by him on that date.

The ballot, as approved by Mr Kohr, did not include his name as part of his slate's name. Mr Kohr was given the opportunity to make any changes or correct any errors in the printing of the ballots prior to their final printing and distribution. Mr. Kohr did not change or indicate that there was any problem with the slate name. By not objecting when presented with the ballot prototype and by failing to file a protest at that time, Mr Kohr waived his right to contest this alleged violation of the *Rules*. See In Re Barclay, 91-Elec App -111 (SA). Therefore, it is the determination of the Election Officer that the *Rules* have not been violated by the omission of Mr Kohr's name from the name of his slate on the ballot.

**IV. The Failure of the Local to Supply a List of Stewards' Names and a Worksite List.**

The investigation revealed that Andrew Kohr, by letter dated January 22, 1991, requested that the Local Union provide him with a list of stewards and worksites. Local Union official Dale Crum advises that he received the request on or about January 25, 1991. Mr. Crum states that he announced at a meeting for delegates that a stewards list would not be given out but that a list of employers under contract, or a worksite list, was available at the "front office," i.e., at the Local Union hall. Crum stated that when he received Mr. Kohr's letter, he consulted with the Local Union Executive Board at its regular meeting and it was confirmed that the stewards list would not be provided. Mr. Crum also stated that he saw Mr. Kohr on February 11, 1991 and no mention was made concerning the request. The Local did not formally respond to the request of Mr. Kohr.

Mr. Kohr has advised that he knew that the list of worksites has always been available at the Local Union office. He also stated that he did not feel pressed for the worksite list because he felt that he could identify and contact those sites and in fact did do so. No pre-election protest was filed by Mr. Kohr concerning the failure to receive worksite list or stewards' list from the Local.

The *Rules* do not require that the Local provide a list of stewards. Further, assuming the Local had an obligation to provide a steward's list, Mr. Kohr was aware no later than the end of January, 1991 that the Local was not complying with his request. No protest was filed until after the March 1, 1991 ballot count. Mr. Kohr cannot sit idly in the face of the Local's failure to respond to his request and then file a post-election protest.

Article VIII, § 1 of the *Rules* provides that any delegate candidate has a right to inspect and make notes from collective bargaining agreements covering members of the Local Union. That right may be satisfied by the Local Union by providing a worksite list with addresses where any and all of its members work. Mr. Kohr admits that he was aware that he could obtain the worksite list by merely going to the Union office. He further admits that he was able to identify the location of the work sites where he wished to campaign. Further, as with his request for the steward's list, Mr. Kohr did nothing until after the ballots were counted.

The Election Officer notes that the Local should have responded to Mr. Kohr's request within five days. See, e.g., *Rules*, Article VIII, § 1 (a) and (c). However, the Election Officer finds no violations occurred. The Local provided a worksite list, the *Rules* did not require that a stewards list be provided. Further, even assuming a violation, the protest is untimely. In re Barclay, 91-Elec App -111 (SA).

**V. Conclusion.**


Based on the foregoing, it is the determination of the Election Officer that the allegations of the protest filed by Mr. Richwine and Mr. Kohr do not constitute

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violations of the *Rules* Accordingly, the protests of Mr Richwine and Mr. Kohr are 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  
Peter V Marks, Sr , Regional Coordinator