



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

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April 16, 1991

VIA UPS OVERNIGHT

Don D Riccio
P O Box 523
Leesport, PA 19533

James C Burns
President
IBT Local Union 429
c/o Burns/Ignatosky Slate
IBT Local Union 429
1055 Spring St.
Wyomissing, PA 19610

Re: Election Office Case No. Post-42-LU429-PHL

Gentlemen:

A post-election protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Don Riccio, an unsuccessful candidate for 1991 IBT International Convention delegate from Local 429. He contends that the Local violated the *Rules* with respect to the delegate and alternate delegate election.¹

Local 429 held its delegate election on March 4, 1991. The Local elected seven delegates and two alternate delegates to the 1991 IBT International Convention. The election was conducted exclusively by mail ballot. There were eight candidates running for delegate, seven of whom were running as a slate, titled the "Burns/Ignatosky Team."² Don Riccio, complainant herein, was the only independent candidate. The tally of ballots cast and counted was as follows:

¹Mr Riccio previously filed a protest, Election Office Case No P-573-LU429-PHL, seeking the removal from the ballot of a candidate who died after his nomination but prior to the election. The Election Officer denied the protest by letter dated March 4, 1991. No appeal was taken from that decision.

²The alternate delegate positions were uncontested.

BURNS/IGNATOSKY TEAM

James C. Burns	1276
John Ignatosky	1300
George Lorah	1271
Robert R Dautrich	1264
Dennis L Drey	1298
Edward Watkins	1304
G Matt Matetich	1294

INDEPENDENT

Don D. Riccio 403

Mr Riccio 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*") alleging that the Local and/or the Burns/Ignatosky Team had violated the *Rules* by the following conduct (1) the Local did not post the summary election plan on all Union bulletin boards as required by Article II, § 2 (d) of the *Rules*, (2) Complainant was not notified of the printing of the ballots, and the ballots fail to include his nickname, "Doc", he was further not notified of the mailing of the ballots as provided in Article IX, § 4 of the *Rules*, and (3) the Burns/Ignatosky Team mailed campaign materials using the non-profit bulk mail permit of the Local with no disclaimer on the envelopes, in violation of Article X, § 1 (b) of the *Rules*. Each of the allegations is discussed below.

I. Failure to Post Election Plan Summary.

Complainant contends that the Local Union Election Plan Summary was not posted on all Union bulletin boards. Complainant specifically states that at three employer locations, Newpin Motor Express, Weatherall Company and Quakermaid Kitchens, the Election Plan Summary was not posted on the Union bulletin boards. The Local Union states that the Local Union Plan Summary provides the Local would publish the notice of nomination meeting and election in its Local Union newsletter on December 10, 1990. The Local understood that such mailing would meet the notice requirements of the *Rules*.

The Local correctly states that the Election Plan Summary provided that the notice of nomination meeting and election would be sent to all members via the Local Union newsletter. The Election Officer finds that the Local complied with this portion of the Summary and thus the *Rules* were not violated by failing to post this notice. However, Complainant contends that what was failed to be posted on all bulletin boards was not the notice of nominations meeting and election, but instead the Local Union Election Plan Summary. The Local states that it did not recall whether the Local Union Election Plan Summary was posted on all bulletin boards. By letter dated December 18, 1990, the Regional Coordinator, Peter Marks, advised the Local that it had the obligation to post the Summary. That letter stated in pertinent part:

Dear Mr Burns

Enclosed you will find a copy of the Local 429 Election Plan Summary. This must be posted wherever Local 429 normally posts notices to its members within seven days of approval of the Election Plan or, no later than December 20, 1990. . . . This notice must remain posted until the delegate and alternate delegate election process is completed.

The Local was required to post the Local Union Election Plan summary and was specifically notified by the Regional Coordinator of its obligation to do so. Its failure to post is a violation of the *Rules*. See *Rules*, Article II, § 2 (d).

II. Failure to Notify Concerning the Printing and Mailing of the Ballots

Article IX, § 9 of the *Rules* provides that observers shall be permitted to inspect the ballot prior to printing. Section 5 of the same Article also provides that observers shall be permitted to observe the entire mailing process. Complainant contends that he was not afforded the opportunity to observe either.

The Election Officer investigation determined that on or about January 31, 1991, Mr Riccio contacted the office of the Regional Coordinator about the mailing date of the ballots. He was advised by the Regional Coordinator's office that ballots would be mailed between February 11 and 13, 1991. Mr. Riccio admits that during this conversation he did not make any request to review the ballot prior to its mailing nor did he mention that he had a nickname that he wished to have included on the ballot. He also did not make any request to be notified as to the exact time of the mailing.

Subsequent to this conversation, the office of the Regional Coordinator attempted to contact Mr. Riccio at his listed home telephone number on many occasions seeking his approval of the ballot prototype prior to the printing of the ballot and to inform him of the exact ballot mailing date. The Local Union also attempted to contact Mr. Riccio concerning these matters. Mr Riccio did not contact either the Regional Coordinator or the Local after his January 31, 1991 call to the Regional Coordinator. There is no evidence that the mailing of the ballots was in any way improper. The ballots were mailed on February 15, 1991 by Kennedy Printing Company, Inc. The printer has certified that 4,862 delegate election ballots were mailed and additional ballots, 613, were returned to the Regional Coordinator. The Regional Coordinator confirms that the number of ballots printed, returned and mailed is accurate. The final tally accounts for all ballots.

Based on the foregoing facts, it is the determination of the Election Officer that the *Rules* were not violated. Mr Riccio did not avail himself of the right to observe or send an observer to the mailing of the ballots. The Regional Coordinator made all reasonable efforts necessary to inform Mr Riccio of his right to inspect the ballot.

prototype prior to printing. Clearly, Mr Riccio was aware of the approximate date on which ballots were to be mailed and thus, the approximate date by which they had to be printed. He was aware that he could contact the Regional Coordinator's office so as to insure that his rights of inspection of the ballot prototype and observation of the mailing could be fulfilled, but did not do so. Both the Regional Coordinator and the Local Union attempted to contact Mr Riccio concerning the printing and mailing but were unsuccessful. The *Rules* do not require that an observer inspect the ballot prototype or oversee the mailing, only that the opportunity must be permitted. The *Rules* are not violated by a candidate's failure to avail himself of this opportunity.³

III. Improper Mailing of the Burns/Ignatosky Campaign Literature.

Complainant contends and the Local admits that it utilized the non-profit bulk rate permit of the Local, which requires that the Local's return address to be printed on the mailing, to mail its campaign literature. The literature was mailed on or about January 28, 1991. Complainant contends that the use of such permit violates Article X, § 1 (b)(3) of the *Rules* which prohibits the use of Union funds or goods to promote the candidacy of any individual or the use of the Union's official stationery with the Union's name, insignia or other mark identifying the Union. The Local has provided receipts indicating that it paid for the mailing including the postage. Thus, any allegation as to use of Union funds is not founded.

However, it is clear that the envelope used was official Union stationery. The Local contends that in order to use the bulk rate mail permit it was necessary to use the return address of the Local Union. The Election Officer agrees that this is the practice of the Postal Service. However, and because of this Postal Service requirement, Article VIII, § 6 (a)(3) of the *Rules* requires that all literature distributed through the use of the non-profit organization bulk rate permit shall clearly state that it is campaign literature, the contents of which are not endorsed by the Union. A review of the envelope shows that the Local Union did not place this disclaimer upon the envelope. Therefore, the Election Officer finds that the Burns/Ignatosky Team did violate Article VIII, § 6 (a)(3) of the *Rules* by failing to place the disclaimer on the envelope containing its campaign material.

IV. 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 the election. *Rules*, Article XI, § 1(b)(2)

³This protest is also untimely under Article XI, § 1 of the *Rules*. Mr. Riccio was aware as of the date he received his ballot, shortly after February 15, 1991, that the ballot did not contain his nickname and that the ballots had been mailed. Mr Riccio can not then wait until the election is completed to file a protest concerning these alleged violations. *Rules*, Article XI, § 1 (a). See In Re Barclay, 91-Elec App 111.