



OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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April 22, 1991

VIA UPS OVERNIGHT

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Delbert L. Smith
President
IBT Local Union 325
5533 Eleventh St
Rockford, IL 61109

Cleo Whitlock
6786 Rydberg Rod.
New Melford, IL 61109

George W. Freeman
4394 Antelope Dr.
Rockford, IL 61109

Edward (Ted) J. Sherman
12874 Caledonia Road
Belvedere, IL 61008

Re: Election Office Case No. Post-60-LU325-CHI

Gentlemen

This post-election protest was filed by Steve Lindquist and George W. Freeman pursuant to *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules"). Their protest is based on the four following allegations: (1) A candidate running for election as delegate was being paid by the Local while engaging in campaign related activities, (2) some of the return ballots in the mail ballot election were returned to a Chicago post office box, and not to the Rockford post office box where they were supposed to be returned, (3) that one of the candidates was in contact with the local union attorney during the ballot count, and (4) an incomplete membership list was used in sending out the ballots resulting in some eligible members not receiving ballots.

Local Union 325 elected one delegate and one alternate to the 1991 IBT International Convention. The date of the election count was March 22, 1991. There were 1300 ballots mailed out and 435 ballots cast, 395 ballots were counted, there were 4 void ballots and 36 challenged ballots.

Steven Lindquist
Page 2

Two slates and one independent alternate candidate appeared on the Local 325 ballot. The tally of ballots was as follows:

<u>SLATE</u>			
<u>DELEGATE</u>	<u>VOTES</u>	<u>ALTERNATE</u>	<u>VOTES</u>
Delbert Smith	241	Edward Sherman	221
<u>SLATE</u>			
Steven Lindquist	142	George Freeman	116
<u>INDEPENDENT</u>			
		Cleo Whitlock	45

There was a 99 vote margin between the protester, delegate candidate Lindquist, and successful candidate for delegate, Delbert Smith. A 105 votes separated Lindquist's running mate George Freeman from the successful candidate for alternate Edward Sherman.

This post-election protest was investigated and considered by the Election Officer, and this decision is being rendered by the Election Officer, pursuant to the provisions of Article XI § 1(b)(2) of the *Rules* which provides that "Post-election protest shall only be considered and remedied if the alleged violation may have affected the outcome of the election." Thus, a violation of the *Rules* is not alone sufficient to set aside an election unless there is a reasonable probability that the outcome of the election may have been affected by the alleged 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 (M D Alabama 1989)

The protesters challenge the Local 325 delegate and alternate election on four separate grounds. Each set of allegations will be dealt with in separately numbered paragraphs below.

I. Payment by the Local.

The Election Officer investigation of this protest found that both Delbert Smith, Local Union Secretary-Treasurer, and Edward "Ted" Sherman, a Local Union business agent, were present during the ballot count. Both received their regular Union salaries

for the time they spent observing the count Both Sherman and Smith contend that since they normally work 65 to 70 hours a week, while being paid for 45 hours, the time they spent at the count should not be considered violative of the *Rules*. Both admit however, that they were on regular pay status while observing the ballot count on Friday, March 22, 1991. Their pay was not "docked" nor were they required to use vacation time.

Article IX, § 1, (a) of the *Rules* states, in pertinent part, that "Each candidate should have the right, at his/her expense to observe. . . each and every phase of the election process." However, Article XI § (1)(c) of the *Rules* also states that "Time spent observing shall be considered as time spent on Union business."

The Election Officer has concluded, however, that it is unnecessary to the disposition of this protest whether the *Rules* were violated by the Local's payment of Sherman and Smith's regular salaries for the week which included the day they spent observing the count Since this is a post-election protest, it is only to be considered and remedied if the alleged violation may have affected the outcome of the election. *Rules* Article XI § 1(b)(2) It is clear that whether or not the *Rules* are violated by the Local's salary payments to Sherman and Smith, such violation could not have affected the outcome of the elections The violation, if any, occurred during the ballot count, after the election campaign had concluded and after all ballots had been cast In effect the election was over, only the counting of the ballots remained Since the outcome of the election was not affected by this alleged violation, the Election Officer concludes that this portion of the protest must be denied

II. The Post Office Issue.

On March 14, 1991, Julie E Hamos, Regional Coordinator for the Chicago area, informed all candidates, including Lindquist and Freeman, by letter that she had learned that a Post Office error caused a misprint of the return mail envelope Because of this error, some of the return ballots for the election were being sent to the main post office in Chicago as well as the post office in Rockford, Illinois Ms. Hamos indicated further that she believed that the problem had been alleviated To be certain that all ballots timely cast were counted, the Regional Coordinator stated that any ballots being held at the main post office in Chicago would be picked up by Adjunct Coordinators Bob Walsh and Ed Sharp on March 22, 1991 and be taken by them to Rockford where would be combined with the ballots collected from the Rockford post office prior to the count All candidates were invited by Ms Hamos to view the pick up of the ballots from both post offices

The post office error was a misprint in the bar code on the return envelopes The bar code activates the post office's automatic sorting machine In this particular case the bar code on the envelopes resulted in the automatic postal machine directing the return ballots to Chicago When post office employees saw a Rockford address with a bar code for Chicago on the return ballot envelopes, they immediately contacted Ms Hamos

The post office stated that the ballots would be either directed to the Chicago post office, in accordance with the bar code, or the Rockford post office in accordance with the written address on the return envelope, but would not be sent to any other post office.

Article XII, § 3(c)(5) of the *Rules* provides that the Election Officer or his representatives shall secure a post office box for the return of mail ballots, and the address of the return envelope shall correspond to that post office box. Article XII, § 3(c)(7) provides that the deadline for receiving mail ballots shall be noon of the day which is the return or voting date. Article XII, § 3(c)(8) provides that all mail ballots shall be picked up after noon on the return date by the Election Officer or his representative.

Here through post office error, the coded return address on the ballot envelope directed some ballots to the Chicago post office rather than the Rockford post office, which was the designated depository. However, it appears with reasonable certainty that ballots were not returned to any other post office. Ballots were retrieved from both post offices prior to the count. The security of the ballots was maintained at all times. The cast ballots were always in the custody and control of either the United States Postal Service or representatives of the Election Officer.

Other than speculation there is no basis to conclude that the error of the post office with respect to the bar code affected the results of the delegate and alternate delegate election. Thirty-four percent of the ballots mailed were returned as voted ballots. Such percentage is consistent with, if not higher than, the return ratio that has occurred in other delegate and alternate elections. See in re. Vincent L. Meredith and IBT Local Union 89, Election Officer Case No. Post-45-LU89-SCE affirmed 91-Elec App 125. Since Postal Service error did not affect outcome of the election, this aspect of the post-election protest must be denied.

III. Conferring with the Local Union Attorney.

The protestors allege that during the period that ballots were being counted, on Friday, February 22, 1991, both Messrs. Sherman and Smith left the counting area on several occasions. The protestors contend that they left to confer, by telephone, with counsel for Local Union 325, Marc Pekay.

Mr. Smith denies speaking with Mr. Pekay on March 22, 1991, other than having a telephone conversation with him on the morning of that date, prior to the start of the ballot count. Mr. Sherman agrees that he talked to Mr. Pekay during the period of the ballot count, but contends that their discussion concerned an unrelated matter pending before the National Labor Relations Board.

Article VII, § 7 of the *Rules* describes the rights of observers during the time the ballots are being counted. The *Rules* do not prohibit observers from leaving and re-

entering the locale of the ballot count.

Further, even if the conduct of Messrs. Smith and Sherman violated the *Rules*, that violation could not have had any affect on the outcome of the election. The alleged wrongful conduct occurred after the conclusion of the delegate and alternate election campaign and after all ballots were cast. There is no allegation, and the Election Officer found no evidence, that Messrs Smith and Sherman's activities interfered in any way with the ballot count. For the foregoing reasons this aspect of the post-election protest must also be denied.

IV. Voter Eligibility.

The protestors alleged that the eligibility list used by the Election Officer to determine whether cast ballots were cast by eligible voters was incomplete. Thus, they claim eligible voters were disenfranchised.

A total of 36 ballots were challenged during the election counting process. The number of challenged ballots do not affect the results of the election. Nonetheless the Election Officer investigated the 36 ballots challenged. Only 9 of those ballots were challenged because the voter did not appear on the election day eligibility roster. The Election Officer investigation determined that in fact all 9 members were ineligible to vote, either they had arrearages in dues, were suspended, had not completed payment of their initiation fees, or were on withdrawal from membership.

In addition, the Election Officer reviewed the other 25 challenged ballots and found that all but one would have been upheld if it had been necessary to resolve challenges. The ballot cast by Don Harriet was challenged on the basis that his name did not appear on the eligibility list. Upon further review his name was in fact found on the eligibility list. Obviously one vote does not affect the results of this election.

The protestors also contend that members of Local 325, eligible to vote, did not receive ballots because they were allegedly not on the eligibility list. Protestors supplied the names of three such members. Review of the eligibility list, however, shows these three members as being listed thereon.¹

All Local 325 members were notified in the election notice of the anticipated date on which ballots were to be mailed. They were further informed on that notice

¹The Election Officer investigation found that the ballot of one of these three members, William Isham, was inadvertently glued to the ballot of another member, and thus erroneously received by the second member. One vote did not affect the outcome of this election. Further, Mr. Isham, not receiving his ballot, could have contacted the Regional Coordinator and a ballot would have been mailed to him. See *Rules* Article 12 § (3)(c).

Steven Lindquist
Page 6

that, if they did not receive a ballot, they were to contact the Regional Coordinator and a duplicate ballot would be sent.

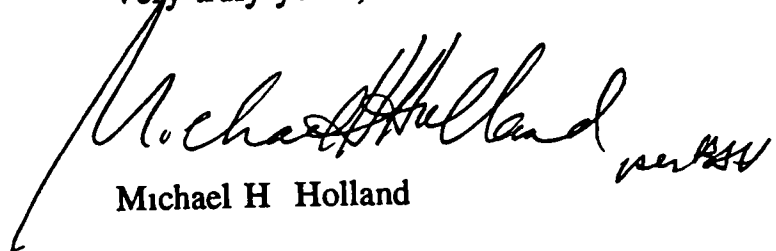
No evidence was presented by the protestors, and the Election Officer uncovered no evidence, indicating that members of Local 325 did not receive their mail ballots. As indicated above the ballot return of approximately 34% is consistent with, if not higher than, the return in other locals. Other than speculation there is no evidence to suggest that eligible members did not receive ballots. Review of the eligibility roster prepared by the Election Officer in conducting this election demonstrates that no members eligible to vote were omitted from such roster.

Accordingly this aspect of the protest is also **DENIED**.

V. Conclusion.

For the reasons stated, this entire post-election 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/mjv

cc Frederick B. Lacey, Independent Administrator
Julie E. Hamos, Regional Coordinator