



OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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May 14, 1991

VIA UPS OVERNIGHT

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Secretary-Treasurer
IBT Local 406
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c/o New Direction Slate
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Ron Telman
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West Olive, MI 49460

Re: Election Office Case No. Post71-LU406-MGN
P-717-LU406-MGN

Gentlemen

A post-election protest was filed on April 16, 1991 by Mr Gene E Davis pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*"), in which he questioned the number of ballots mailed to members in the rerun election taking place in April 1991. This post-election was supplemented by a filing by Mr Davis on April 17, 1991 in which he laid out the background of his protest and specifically requested that a previously deferred pre-election protest be considered as a part of this post-election protest. The pre-election protest to which he referred, P-717-LU406-MGN, was filed on March 29, 1991, by him,

James E Tol and Clifford Mulder The Election Officer, on April 2, 1991, deferred ruling on this protest

The original delegate and alternate election in Local 406 occurred and the ballots were counted in January 1991. Because ineligible candidates were listed on the ballot, the Election Officer in Election Office Case No Post-10-LU406-MGN ordered that the election be rerun. The order to rerun the election was upheld by the Independent Administrator in 91-Elec App -85 (SA). In a letter of March 15, 1991 to all candidates, the Election Officer stated that ballots for the rerun election would be mailed on March 25, 1991 and counted on April 13, 1991. He further noted that, "All members of Local 406 who were eligible to vote in the January election and/or are eligible April 13, 1991 shall be eligible to vote in the rerun election."

The election in Local 406 was for nine delegate positions and three alternate delegate positions. The results in the April 1991 rerun election are listed below, as are the results from the original January 1991 election, with the difference in votes received by each candidate.

DELEGATE CANDIDATES

	APRIL	JAN	DIFFERENCE
NEW DIRECTION SLATE			
Denny Brougham	758	962	-204
Gene Davis	739	973	-234
Tom Freyling	742	943	-201
Paul Gardner	718	941	-223
Terry Haehnel	702	921	-219
Fred Hatch	757	974	-217
Paul Manley	725	939	-214
Joe Murphy	776	963	-187
Pat Pitsch	748	942	-194
TEAM 406 SLATE			
Ken DeVries	1033	978	+55
Lyle Baker	1003	965	+38
Brian Seeley	1010	991	+19
Ron Anderson	1026	985	+41
Dale Nyhuis	980	924	+56
Bruce Burkholder	971	914	+57
Tom Hohman	965	948	+17
Pat Burns	1035	990	+45
Bob Popma	970	920	+50

****406 TEAMSTERS FOR RON CAREY****

Dennis Childs	252	184	+68
Bill Mullen	233	188	+45
John Timm	216	163	+53
Doug Shifkey	192	135	+57
Lisa Plamondon	---	227	--
Kent Ackerman	233	170	+63
Robert Schmeltzer	---	160	--
Jerry Zeits	208	166	+42

****INDEPENDENT CANDIDATES****

Ron Talman	171	134	+37
Tom Sleider	129	110	+19

ALTERNATE DELEGATES

	APRIL	JAN	DIFFERENCE
NEW DIRECTION SLATE			
Joe Lowe	862	1059	-198
TEAM 406 SLATE			
Peter Vanderweg	1159	1155	+4
John Conner	1180	1180	---
Larry Haisma	1236	1238	-2

In the January 1991 election the New Direction Slate, headed by Gene Davis, won four delegate positions while the Team 406 Slate, headed by Local 406 Recording Secretary Ken DeVries, won five delegate slots. In the rerun election, the Team 406 Slate won all nine delegate and all three alternate positions. In the rerun election the New Direction Slate members received approximately 200 fewer votes each than in the January election, while the Team 406 Slate members received an average of approximately 40 votes more than each had received in the January election.

In this post-election protest, candidate Gene Davis contends that the Team 406 Slate has committed numerous and cumulative violations of the *Rules*. He urges the Election Officer to disqualify the members of that slate. He asks that a further rerun elections be held with these candidates being removed from the ballot.

I The Alleged Violations

Specifically, Mr Davis claimed that Secretary-Treasurer Ken DeVries had filed a frivolous eligibility protest prior to the original election. When the rerun election was announced, DeVries, purportedly to minimize his responsibility for the rerun, sent out a misleading mailing purporting to be the Election Officer's Summary. A pre-election protest was filed with the regard to this mailing. Election Office Case No P-

703-LU406-MGN The Election Officer found that the abridged version of the Election Officer's Summary was misleading with respect to the actions taken by the Election Officer and the Independent Administrator. Although the Election Officer did not find that this mailing constituted campaign literature *per se*, the Election Officer required that a complete copy of the Election Officer's Summary in Election Office Case No Post-10-LU406-MGN as well as the complete decision of the Independent Administrator affirming the Election Officer, 91-Elec App -85 (SA), be posted on all Union bulletin boards with an attached letter to the membership from the Election Officer, and that the Local Union bear the cost of mailing the same documents to each member of the Local. This decision was affirmed by Independent Administrator in 91-Elec App -120 (SA)

The next specific basis advanced in support of these protests involves an allegation that a campaign mailing for this rerun election made by the Team 406 Slate did not contain the disclaimer required by the *Rules* in Article VIII, § 6 (Election Office Case No P-717-LU406-MGN). The Election Officer investigation revealed that the campaign literature was mailed through use of a non-profit organization postal permit supplied by the mailing house utilized by the Local. The mailing contained the name and return address of the Local. However, no disclaimer was contained on the campaign literature. See *Rules*, Article VIII, § 6(a)(3)

The post-election protest also alleges that members of the Local, other than members of the Local 406 Slate, were unaware of the possibility of the use of a non-profit permit for campaign mailing. The *Rules* require in Article VIII, § 6(a)(3) that if the Local has available to it a non-profit permit, all candidates are entitled to utilize such a permit for campaign mailings. Members of the New Direction Slate were not advised of the availability of the non-profit permit for a campaign mailing during either the first or the rerun election. The Team 406 Slate contends that the mailing house, Western American Mailers, automatically mailed the literature using the not-for-profit, permit although not requested to do so by the Team 406 Slate.

Both the New Direction Slate and the Team 406 Slate utilized Western American Mailers to mail campaign literature in the initial election. Neither slates' literature was mailed through use of the non-profit permit. However, the New Direction slate was never informed by either the Local Union or the mail house of the availability of the non-profit permit. Regardless of whether the Team 406 slate requested that its campaign mailing be accomplished by use of the not-for-profit permit, the use of such permit demonstrates its availability. The New Direction Slate was never afforded the opportunity to use the permit. There was discriminatory treatment with respect to the use of the permit even if the Local did not intend to so discriminate. See *Rules*, Article VIII § 10 (c) and Article X § 1 (b)(4)

The campaign mailing distributed by the Team 406 Slate violated the *Rules* in two ways. First, the use of the Western American Mailers not-for-profit permit to accomplish the mailing violated the *Rules* since the permit was not made available to the New Direction Slate and the New Direction Slate was not notified of its availability.

Second, the campaign mailing, although using the not-for-profit permit and listing the name and address of the Local Union as the return address, did not contain a disclaimer. Whether this violation may have affected the outcome of the election will be discussed in section II below.

The second specific allegation of Mr. Davis' post-election protest is that 438 eligible members apparently did not receive ballots during the rerun election of April 1991. Mr. Davis contends that members eligible to vote in January, 1991 but not in good standing on the date of the rerun election did not receive ballots. He argues that this violates the Election Officer's ruling as contained in his letter of March 15, 1991, wherein the Election officer stated that all members eligible to vote in the January election and those eligible as of April 13, 1991 would be eligible to vote in the April 1991 election. Mr. Davis points to the fact 7242 ballots were mailed in December 1990 for the January 26, 1991 election, while the March 25, 1991 mailing for the April 13, 1991 election consisted of 6804 ballots.

The Election Officer's investigation reveals that ballots were not sent on March 25, 1991 to members of the Local who did not appear on the March, 1991 mailing roster, although appearing on the December, 1990 roster, due to layoffs, withdrawals and other failures to pay dues. Therefore, an error did occur in the failure to mail ballots to 438 potentially eligible voters, thus violating the *Rules*.

II The Effect on the Outcome of the Election.

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* 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. 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 (D C M D Alabama 1989). Since the Election Officer has already determined that the *Rules* have been violated, the issue thus becomes whether said violations affect the outcome of the election. For the reasons set forth below, the Election Officer determines that these violations, taken together, may have affected the outcome of the election.

As discussed in section I above, 438 members who were potentially eligible to vote in the rerun election did not receive ballots. Although it is unlikely that all of their members would have cast a ballot or would have been eligible to do so, the margin of victory in the delegate race was 189 votes, significantly less than the number of members who did not receive a ballot.

In addition, the use of the American Western Mailers not-for-profit permit by the

Team 406 slate to distribute its campaign literature to the membership in the rerun campaign violated the *Rules*. Although the Team 406 slate may have utilized the permit unintentionally, it is clear that the use of the not-for-profit permit, with its lower cost for mailing, was not afforded to the other candidates, none of whom did a mailing for the rerun election. Mr Davis advises the Election Officer that based upon the cost of the initial mailing, using a bulk rate permit, the New Direction slate could not afford to complete a second campaign mailing. Thus, the Team 406 slate gained an advantage, even if inadvertently, by the availability of the not-for-profit mailing rate to the Team 406 slate only.

It is also noted that no disclaimer was contained on this campaign mailing despite the fact that the literature contained the name and address of the Local in the exact form as it appears on official Local Union mailings. The contents of the mailing on its face, however, demonstrated that it was campaign literature. Thus, the lack of a disclaimer alone could not reasonably be considered to have affected the election outcome. However, it is a further violation of the *Rules* on the part of the Team 406 Slate.

Although none of these violations standing alone may be considered to have affected the outcome of the election, the combination of the violations create a reasonable probability that the outcome of the election was affected. Therefore, the Election Officer directs the election be rerun.

Mr Davis in his protest also requests that the members of the Team 406 slate be removed from the ballot and disqualified. The Election Officer declines to order such a remedy. As determined above, the *Rules* violation found with respect to the second campaign mailing was not found to be intentional on the part of Team 406 slate members. The Election Officer has previously issued remedies in connection with other protests filed and does not find any reason to alter those remedies in light of the above findings.

Thus, the deferred pre-election protest (Election Office Case No P-717-LU406-MGN) and the post-election protest (Election Office Case No P-71-LU406-MGN) are **GRANTED** to the extent set forth above. A further rerun election is ordered. All members eligible to vote on the date of the January, 1991 election or on June 7th shall be eligible to vote. Ballots will be mailed on or about May 22, 1991 and are to be returned on or before 10 A M on June 7, 1991 and will be counted immediately after the mail ballot pick-up at the Local Union hall.

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)

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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
James De Haan, Regional Coordinator
Bob Matthews, Adjunct Regional Coordinator