



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 11, 1991

VIA UPS OVERNIGHT

Walter Kijanski
P O Box 642
Wallingford, CT 06492

Edward Brereton
Secretary-Treasurer
IBT Local Union 443
P O Box 1710
New Haven, CT 06507

Re: Election Office Case No. P-720-LU443-ENG

Gentlemen

A pre-election protest was filed pursuant to Article XI of the *Rules*. In his protest, Walter Kijanski, a delegate candidate on the Ron Carey Slate, alleges that the mailing of the February issue of the International Teamster magazine was improperly delayed and that IBT members of the Local were denied the benefit of the information about General President candidate Ron Carey contained in that issue of the magazine. Since he was seeking election as a delegate committed to Ron Carey, he claims his campaign was adversely affected.

The protest was investigated by the Election Officer's staff in Washington, D C. The investigation disclosed the following facts. The February, 1991 issue of the International Teamster contained campaign literature for accredited International Officer candidates. *Rules*, Article VIII, § 9 (a). Kijanski did not receive his copy of the February, 1991 issue of the magazine until March 1, 1991.

Other members of Local 443 may have been similarly affected. However, some members of Local 443 did receive their copies of the February, 1991 issue on a timely basis. The election was conducted by mail ballot. Ballots were mailed February 21, 1991 and counted on March 11, 1991. Kijanski believes that the magazine would have influenced the votes of some members had it been received before the ballots were mailed or before such members voted and returned their ballots.

The investigation shows that the International Teamster magazine is mailed to the IBT membership by a mail house, located in Washington, D C. All copies of the February issue of the International Teamster were delivered to the mail house at the

same time by the IBT for distribution to the membership. The magazine was deposited at the mail house on February 5, 1991, after which time the mail house distributed the magazine. The Election Officer investigation demonstrates that the timing is in accord with prior practice of the International.

The Election Officer is aware of some distribution problems in the Connecticut with the distribution of the February issue of the International Teamster. See P-625-LU191-ENG. Based upon his investigation, the Election Officer concludes that any delay in the actual mailing of the magazine to the membership of Local 443 was not the fault of the IBT,¹ but rather due to processing problems by the local post office. Thus, the *Rules* have not been violated and the protest is DENIED.

Further, assuming a violation, such violation did not affect the outcome of the Local 443 delegate and alternate delegate election. Since Local 443 has concluded its delegate election, and this protest is being considered post-election, the *Rules* as well as existing legal standards require that protests be evaluated in terms of the protested conduct's impact on the outcome of the election. *Rules*, Article XI, § 1 (b)(2). There must be a reasonable probability that but for the violation, the results of the election would have been different. Wirtz v. Local Unions 410, 410A, 410B & 410C, International Union of Operating Engineers, 366 F 2d 438 (2nd Cir 1966).

In this case, there is no reasonable probability that the delay in the receipt of the magazine affected the outcome of the election. The election was conducted by mail ballot. The ballots were mailed on February 21, 1991, and they were counted on March 11, 1991. There were 3964 ballots mailed, 1414 ballots were returned and 1143 ballots were counted. 25 votes separate the winning candidate with the lowest number of votes and the losing candidate with the highest number of votes.

The election tally was as follows.

RANK AND FILE CAREY SLATE		443 EXECUTIVE BOARD SLATE	
<u>For Delegate</u>	<u>Votes</u>	<u>For Delegate</u>	<u>Votes</u>
James DeAngelo, Jr	542	Edward Brereton	600
Jerry Guay	537	Angelo Chieppo	586
David Smith	537	Anthony Buonpane	581
Walter Kilianski	526	Donald Melvin	571
Clarence D Marston	520	Felix Del Giudice	567

¹Local Unions are not involved in the publishing or distribution of the International Teamster, other than providing the International with members' addresses. There is no suggestion here that Local 443 tampered with mailing addresses.

For Alternate Delegate

Robert J Kelly	531
Joseph J Gaglio	507

For Alternate Delegate

Vincent J Pisano	598
Robert E Bayusik	587

Campaigning was vigorous on both sides. Each side campaigned in person and also mailed campaign literature to the entire Local Union membership. The Rank and File Carey Slate mailed its literature on February 19, 1991, the 443 Executive Board Slate mailed on February 20, 1991.

The ballots for this election were mailed February 21, 1991, and counted on March 11, 1991. Thus, all members, even those whose receipt of the International Teamster was delayed, would have received the magazine with a few days of receiving the ballot. Kijanski admits that he received his issue on March 1, 1991.² Further, the February issue of the International Teamster contained information about the candidates for International Office, not about the delegate and alternate delegate candidates. All Local 443 members had received campaign literature about the candidates for whom they were voting via the slates' campaign mailings prior to the time ballots were cast.

The Election Officer finds no reasonable basis for concluding that the results of the election were affected by the delayed receipt by some members of the Local of the February, 1991 issue of the International Teamster. The Election Officer's conclusion is further buttressed by the election results in Local 191, the only other Local whose members' receipt of the February, 1991 issue of the International Teamster was delayed. In Local 191, the ballots were counted on March 7, 1991, some members did not receive the magazine until March 4, 1991. Nonetheless, the candidates seeking election committed to the nomination and election of Ron Carey won. Thus, even if the *Rules* had been violated -- and no violation has been found -- the protest would have to be denied since the conduct did not affect the election results.

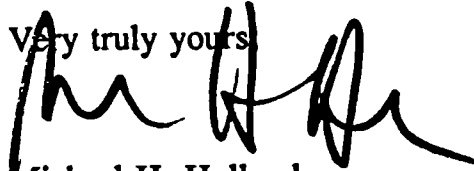
If any interested party is not satisfied with this determination, they may request a hearing before the Independent Administrator within twenty-four (24) hours of their receipt of this letter. The parties are reminded that, absent extraordinary circumstances, no party may rely upon evidence that was 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

²It is arguable that the campaign impact of the magazine was greater when received shortly after the ballots than if it had been received in the normal course, two weeks prior to the receipt of the ballot.

Walter Kijanski
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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
Peggy A Hillman, Regional Coordinator