

Michael H Holland  
Election Officer

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June 14, 1991

UPS - SATURDAY DELIVERY

Mr. James E. Tol  
788 Bungalow Road, S.W.  
Wyoming, Michigan 49509

Mr. Gene E. Davis  
3721 Eckert Road  
Freeport, Michigan 49509

Kenneth DeVries  
Secretary-Treasurer  
IBT Local 406  
3315 Eastern Ave., S.E.  
Grand Rapids, Michigan 49508

Re: Election Office Case Nos.  
Post 74-LU406-MGN, P-783-LU406-MGN  
and P-784-LU406-MGN

Gentlemen:

Three protests were filed pursuant to the Rules for the IBT International Union Delegate and Officer Election, revised August 1, 1990, ("Rules") concerning the rerun election conducted by the Election Officer for delegates and alternate delegates to the 1991 International Election from Local Union 406. Two of the protests were filed prior to the date of the election ballot count. Since these protests involved allegations of violations which, even if true, could not be remedied by the count date, they were deferred by the Election Officer for post-election consideration. Rules, Article XI, Section 1(a)(4)(b). The third protest was filed post-election.

Mr. James E. Tol, a member of Local 406, filed a protest on May 28, 1991 (Election Office Case No. P-784-LU406-MGN); that protest complains about alleged inadequacies in the Election Notice and Mail Ballot

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Voting Instructions sent to all members of Local 406 notifying them of the Election Officer's directive to hold a second rerun election for delegate, i.e., a third mail ballot election, and enclosing their ballots. Mr. Gene E. Davis, a candidate for delegate from IBT Local 406 running on the New Direction Slate, also filed a protest on May 28, 1991 (Election Office Case No. P-783-LU406-MGN); that protest complains about purported improprieties in the manner in which Local 406 responded to Mr. Davis's request for mailing labels for the distribution of campaign literature to members of Local 406 in connection with the second rerun election. Both of these protests were deferred until after the ballots were counted on June 7, 1991, and the results of the second rerun election were announced.

By letter dated June 10, 1991, docketed as Election Office Case No. Post 74-LU406-MGN, a copy of which is enclosed, Mr. Davis supplemented his protest by adding several new issues, namely, a claim that the Team 406 Slate had improperly used Union bulletin boards to post literature containing misleading statements and a claim that the mail labels supplied by Local 406 were incomplete.

The history of election problems in Local 406's delegate election is complicated. The first delegate election occurred in January 1991. Because ineligible candidates were listed on the ballot, the Election Officer ordered that the election be rerun (Election Office Case No. Post-10-LU406-MGN); that order was affirmed on appeal to the Independent Administrator (91-Elec.App.-85 (SA)). The second election was held in April 1991. Because ballots were not sent to 438 members and because of improprieties in candidate mailings (one of the slates was denied use of the not-for-profit mailing permit and no disclaimer was contained on the literature mailed by another slate) and

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in view of the closeness of the election results, the Election Officer ordered a second rerun election (Election Office Case Nos. Post 71-LU406-MGN and P-717-LU406-MGN).

The third election in Local 406 for nine delegates and three alternate delegates was completed on June 7, 1991. The results of all three elections are listed below:

<u>Candidates</u>	<u>January</u>	<u>April</u>	<u>June</u>
<u>Delegates</u>			
New Direction Slate			
Denny Brougham	962	758	670
Gene Davis	973	739	656
Tom Freyling	943	742	661
Paul Gardner	941	718	647
Terry Haehnel	921	702	626
Fred Hatch	974	757	682
Paul Manley	939	725	657
Joe Murphy	963	776	687
Pat Pitsch	942	748	646
Team 406 Slate			
Ken DeVries	978	1033	744
Lyle Baker	965	1003	730
Brian Seeley	991	1010	753
Ron Anderson	985	1026	742
Dale Nyhuis	924	980	725
Bruce Burkholder	914	971	716
Tom Hohman	948	965	710
Pat Burns	990	1035	773
Bob Popma	920	970	708

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## 406 Teamsters For Ron Carey

Dennis Childs	184	252	160
Bill Mullen	188	233	159
John Timm	163	216	143
Doug Shifkey	135	192	142
Lisa Plamondon	227	---	---
Kent Ackerman	170	233	148
Robert Schmeltzer	160	---	---
Jerry Zeits	166	208	123

## Independent Candidates

Ron Talman	134	171	104
Tom Sleider	110	129	97

Alternate Delegates

## New Direction Slate

Joe Lowe	1059	862	761
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## Team 406 Slate

Peter Vanderweg	1155	1159	855
John Conner	1180	1180	881
Larry Haisma	1238	1236	901

While the winners of the first election were split between the members of the New Direction Slate and the Team 406 Slate, candidates running on the Team 406 Slate won all races in the second and third elections. The closest vote margin in the third election was 21 votes. 1/

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1/ Bob Popma was the lowest delegate winner with 708 votes and Joe Murphy was the highest loser with 687 votes. As for the alternates, there was a 94 vote margin between Peter Vanderweg with 855 votes and Joe Lowe with 761 votes.

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I. James E. Tol's Protest (Case No. P-784-LU406-MGN)

Mr. Tol complains about alleged inadequacies in the Election Notice which was sent to all members of Local 406 in the mail ballot packet which also contained their ballots for the third election. The first paragraph of the notice, which Mr. Tol claims was incomplete, states as follows:

Election rule violations, which together may have affected the outcome, prevent the Election Officer from certifying the results of the April 13, 1991 rerun election for delegates to the 1991 IBT Convention. Therefore, in accordance with Article XI Sec. 3 of the Rules, the Election Officer has directed that the election must be held again.

The second and final paragraph of the notice contains instructions and deadlines for voting and mailing the ballot.

Mr. Tol believes that the notice should have contained more details about how the third election came about; he asserts that the Election Officer should have described the violations which were committed and named the persons who committed the violations. Mr. Tol believes that the Election Officer was obliged to supply the membership with the factual details about the prior protests in part to counter the claims made by members of the Team 406 Slate blaming the Election Officer for the rerun problems without acknowledging their own culpability in the prior protests. 2/

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2/ On May 24, 1991, Mr. Tol submitted a copy of a leaflet from the Team 406 Slate which apparently was posted on union bulletin boards shortly after May 22, 1991, the date it was sent; this leaflet purports to describe the history of the first two elections and asks for continued support in the  
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See also Election Officer Case No. P-703-LU406-MGN, affirmed 91-Elec.App.-120, wherein Mr. Tol and Mr. Davis complained that literature sent by the Local to the membership explaining the Election Officer's basis for conducting the first rerun election wrongfully exculpated Mr. DeVries from any guilt in causing the Election Officer to conduct a rerun election. The Election Officer required the Local to pay for a mailing by the Election Officer of the Independent Administrator's decision affirming the order for the first rerun and the brief of the Election Officer to the Independent Administrator in order to cure any confusion as to fault created by the Local's mailing.

The Rules for the IBT International Union and Delegate Officer Election contain several provisions concerning the contents of official notices pertaining to the elections: Article XII, Section 3(c) requires the Election Officer to include in the mail ballot packet "instructions regarding the procedure for mail ballot voting;" Article II, Section 5(d) sets forth with specificity the contents of the notice of election; Article II, Section 8 describes the ballot. Indeed, the Election Officer promulgated and distributed prototype notices in conformance with the Election Rules. The contents of all of the notices is limited to the manner in which the ballot is to be completed (e.g., "Vote for no more than \_\_\_\_ delegate candidates...." Article II, Section 8(c)) and the actual mechanics of the election (e.g., the deadline for receipt of the mail ballot). Nothing in the Rules requires or authorizes the Election Officer to include any other types of narratives in these official notices. In particular, there is no requirement in the Rules that the instructions accompanying mail ballots advise voters of the outcome of protests or the reasons for rerun elections.

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2/ (...continued)  
third election. This is the same leaflet about which Mr. Davis has complained (see discussion infra at pp. 14-15).

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The reasons why such additional information should not be included in official election notices is particularly applicable to this case. In effect, Mr. Tol is requesting the Election Officer to include partisan campaign material in the mail ballot packet, that is, information which would be detrimental to the campaign of the Team 406 Slate. While the Election Officer's decisions on protests are public and available for dissemination by any candidate, the Election Officer would be remiss in including such information in the mail ballot packet. Such information could tend to color a voter's choices and would lend an appearance of partiality on the part of the Election Officer. The Election Officer's mandate to be impartial would be compromised by accepting Mr. Tol's contention; including in the ballot package statements as to the guilt of certain candidates in prior Rules violations would be highly inflammatory and improper.

For these reasons, Mr. Tol's protest is hereby denied. 3/

II. Gene E. Davis's Protest (Case No. P-783-LU406-MGN).

By letter dated May 25, 1991, Mr. Davis protested the failure of Local 406 to provide the New Direction Slate, for which he was a candidate for delegate, mail labels in a timely manner. 4/ The ballots for the third election were mailed to Local 406 members on

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3/ Mr. Tol also requests a reinvestigation of all of his prior protests and further alleges in a general, conclusory sentence that officers of Local 406 have not been fair and honest. The Election Officer considers these additional comments to be without sufficient basis for further discussion.

4/ Mr. Davis's protest letter was followed by a three page letter dated May 28, 1991, limited to the issue of mail labels, which further delineated his basis for contending that the Election Rules had been violated.

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Wednesday, May 22, 1991. Mr. Davis requested mail labels from Local 406 that very same day. Mr. Davis's excuse for not requesting the labels earlier was "a problem in raising campaign funds" that was resolved on Tuesday evening, May 21st. 5/ Mr. Davis received the mail labels from Local 406 on Friday afternoon, May 24, 1991, and was able to complete his mailing on that date. The mail house he used specifically confirmed to an Election Officer representative that it was able to complete the processing of the New Directions Slate literature and deliver it to the post office prior to the close of business on Friday, May 24, 1991. Mr. Davis alleges that the two day delay in complying with his request violates Article VIII, Section 6(f), of the Election Rules which states: "The Union shall exercise all reasonable efforts to insure that each candidate's campaign literature is processed and distributed in a complete and prompt manner."

Investigation reveals that the process of printing the mail labels for Local 406's members from IBT's TITAN computer system normally should take approximately three hours. The Local 406 employees who operate the TITAN computer spent all day Wednesday and Thursday, May 22nd and 23rd, posting dues receipts and billing employers; both functions involve printing as well as computer data entry on the TITAN computer. The Local's staff would have had to interrupt those job duties to comply with Mr. Davis's request. 6/

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5/ Mr. Davis offers no excuse for failing to inquire earlier about how long it would take Local 406 to provide labels.

6/ The Election Officer notes that he has and continues to encourage Local Unions to post dues on a regular and timely basis to help ensure that the dues payment records of all members eligible to vote in the election properly reflect such eligibility. For Local 406, the May postings were necessary to enable  
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There was a significant and extraordinary breakdown of the entire nationwide Titan system on Friday morning, May 24, 1991, due to a power failure in the TITAN mainframe in Washington D. C. As soon as the TITAN system became operable, the labels requested by Mr. Davis were printed. The labels were completed and delivered to Mr. Davis's mailing service at approximately 3:00 p.m. on Friday, May 24, 1991, and the literature was mailed on that same day.

The Election Rules contain a standard of reasonableness for responding to a candidate's request; the Rules do not require a Local Union to interrupt its normal operations. In this case, the Election Officer concludes that Local 406 did not unreasonably delay in responding to Mr. Davis's request. Local 406 had no notice prior to May 22, 1991 that Mr. Davis would request mailing labels or was even contemplating a campaign mailing. During the first rerun, the New Directions Slate made no campaign mailing. Thus, the Local had no basis for assuming that Mr. Davis would require mailing labels and no reason to alter its normal schedule for posting and billing.

While Mr. Davis's objective -- having his literature received as close as possible to the date the ballots were received -- is understandable, Mr. Davis's tardiness in making the request undoubtedly contributed to the two day delay. If Local 406 had had prior notice of Mr. Davis's request, it might have been able to accommodate Mr. Davis more easily. Even if Mr. Davis had informed the Local of the possibility that he might need mailing labels, the Local could have attempted to schedule and perform its posting and billing operations on an earlier date, enabling the TITAN

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6/ (...continued)

the Election Officer to verify eligibility at the June, 1991 count. Eligibility to vote requires dues paid through the month prior to the month of the election.

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to be used for the printing of mailing labels on May 22 or 23, 1991. Mr. Davis could not reasonably expect Local 406's TITAN operator to drop other job duties to comply instantaneously with his previously unannounced request.

For these reasons, the Election Officer denies this aspect of Mr. Davis's protest.

III. The Post Election Protest  
(Case No. Post 74-LU406-MGN)

On Monday, June 10, 1991, three days after ballots were counted in the third election, Mr. Davis "supplemented" his previous protest by adding several, entirely new allegations: a claim that the mail labels belatedly supplied were incomplete; a claim that the New Directions Slate was denied access to Union bulletin boards where the Team 406 Slate posted literature on May 22, 1991; and a claim that the literature posted by the Team 406 Slate on May 22, 1991, was false and misleading.

A. Timeliness of Mr. Davis's Supplemental Claims.

Mr. Davis's letter dated June 10, 1991, sets forth his supplemental claims. With respect to his allegation that the mail labels were incomplete, he alleges that he learned of this fact in conversations with Regional Coordinator James DeHaan. Investigation reveals that these conversations occurred prior to May 22, 1991, the date the ballots were mailed. With respect to his allegations of improper use of Union bulletin boards by the Team 406 Slate and misleading statements in the literature posted, Mr. Davis alleges that he was unaware of the postings until June 8th even though the campaign literature was sent to all

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Local 406 stewards on May 22nd and was posted for several weeks prior to June 8th. 2/

Article XI, Section 1 of the Rules requires that protests be filed within forty-eight hours. While the Election Officer has interpreted this requirement in a liberal manner to facilitate access to the remedial provisions of the Rules, in this instance Mr. Davis has abused the process with this belated supplemental submission. One may easily conclude from the sequence of events that Mr. Davis delayed his submission until after the election count because he lost the election and not because he had no prior knowledge of the alleged violations.

Having filed protests in the past, Mr. Davis was well aware of the procedures. For these reasons, the Election Officer concludes that Mr. Davis's supplemental submission was not filed in a timely manner. In re Barclay, 91 Elec.App. 111. Notwithstanding this decision, and in order to provide the parties with the most complete resolution of the matters raised, the Election Officer will consider all of Mr. Davis's claims on their merits.

B. The Allegedly Incomplete Mail Labels.

The mail labels provided to Mr. Davis contained the names of all members in good standing on May 24th, the date the labels were printed. However, in accordance with the Election Officer's determination, ballots for the third election were to be sent to an additional group of members who were in good standing in January, the date of the first election, although

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2/ Mr. Tol, who has previously been aligned with Mr. Davis (they jointly filed Case No. P-717-LU406-MGN) submitted the very same documents to the Election Office on May 24, 1991.

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they were not in good standing as of May. 8/ The labels provided Mr. Davis by the Local Union did not include the names of members who, whether or not in good standing in January, were inactive in May, 1991. Mr. Davis states that, due to the alleged Rule's violation by Local 406, his campaign literature was not sent to this additional group. 9/

Article VIII, Section 6(e) of the *Election Rules* states:

In complying with requests to mail literature, the Union shall use the current names and addresses that are on file for all relevant members in good standing....  
(Emphasis added.)

Local 406 complied with the mandate of the Election Rules; it provided a list of current names and addresses which is all that the Election Rules require. Indeed, that was all that Mr. Davis requested; his

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8/ In Case Nos. Post 71-LU406-MGN and P-717-LU406-MGN, the Election Officer found that the failure to send ballots to 438 members who were eligible voters in the first election in January, but were not listed as eligible voters in the second election in April, was inappropriate and was a factor in the decision to hold a third election.

9/ The tally sheet for the third election indicates that 7623 ballots were sent out in the initial mailing. Mr. Davis states that he received 6718 mailing labels, and, therefore, he asserts that he did not send literature to 700 previously eligible voters. The Election Officer's Decision referred to above lists the number of previously eligible voters as 438. In view of the Election Officer's conclusion, this difference in numbers is immaterial.

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letter to Local 406 dated May 22, 1991 requests labels "for the current active membership." (Emphasis added.) Furthermore, it is unclear whether Local 406 could have provided a membership list or mailing labels for inactive members through the TITAN system even if Mr. Davis had made such a request; Regional Coordinator James DeHaan was required to manually type ballot labels for the additional group of potentially eligible voters who were sent ballots.

For all of these reasons, including the untimeliness of this protest, the Election Officer denies this aspect of Mr. Davis's protest.

C. Alleged Denial Of Access To Union  
Bulletin Boards.

By letter dated May 22, 1991, Local 406 Secretary-Treasurer Kenneth DeVries, identified in the letter as "Delegate 'Team 406 Slate'" asked all stewards and alternate stewards to post a one page Team 406 Slate campaign leaflet. The Election Rules endorse the use of bulletin boards as a means of communication about election-related matters. See Article VIII, Section 10(d).

In this case, Mr. Davis alleges that Mr. DeVries was accorded a privilege denied to him. However, Mr. Davis provides no support for this contention. While Mr. Davis does refer to a bulletin from Spartan Stores 10/ dated September 22, 1989, which states that "union bulletin boards are limited strictly to written communications which have been expressly authorized by Local 406," there is no indication that Mr. Davis ever

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10/ Presumably, Spartan Stores was only one of the many employers whose stewards received Mr. DeVries's request for posting. Mr. Davis was formerly employed at Spartan Stores; he was terminated early in 1990.

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requested that his literature be posted on Union bulletin boards, as Mr. DeVries did. If Mr. Davis had made a request similar to that made by Mr. DeVries and that request was treated differently than the request of Mr. DeVries, or if Local 406 officials had refused to sanction the posting of Mr. Davis' campaign literature, this aspect of his protest might have had more merit. See Election Office Case No. Post 16-LU769-SEC, affirmed 91 Elec.App. 109.

There is no evidence as to whether Mr. DeVries' literature was in fact widely posted, and there is no evidence to support a contention that Mr. DeVries used undue influence in causing his literature to be posted. Instead of seeking to post literature, Mr. Davis and his New Direction Slate communicated with voters through a mailing and by access to, and distribution of literature in, parking lots.

For these reasons, including untimeliness, the Election Officer denies this aspect of Mr. Davis's protest.

D. Alleged Misleading Statements  
in Campaign Literature

In his supplementary submission Mr. Davis alleges, as did Mr. Tol in his protest of May 28, 1991, that the literature prepared and distributed by the Team 406 Slate, and posted on Union bulletin boards as discussed in Section C, above, was untruthful and deliberately misleading. However, underlying the Rules is a firm policy against censorship or the regulation of the content of campaign literature. Article VIII, Section 6(g) of the Rules specifically states that "[t]he Union may not censor, regulate, alter or inspect the contents of any candidate's campaign literature. The Union may not refuse to process or distribute any candidate's

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literature on the basis of its contents." This policy reflects the right of union members to engage in vigorous internal union debate free from the threat of internal union discipline for their campaign statements. See, e.g., Petramale v. Laborers Local 17, 736 F.2d 13 (2nd Cir. 1984); Semancik v. UMW District 5, 80 LRRM 3475 (3rd Cir. 1972); Salzhandler v. Caputo, 316 F.2d 445 (2nd Cir. 1963). Similarly, the United States Supreme Court has recognized labor disputes "...are frequently characterized by bitter and extreme charges, countercharges, unfounded rumors, vituperations, personal accusations, misrepresentations and distortions. Old Dominion Branch No. 496 v. Austin, 418 U.S. 264, 272 (1974).

Thus, the fact that the campaign statements contained in the Team 406 Slate literature were allegedly false, defamatory or misleading does not remove such literature from the protection of the Rules. The model for free and fair Union elections is that of partisan political elections. In those elections, contestants are generally allowed to make whatever assertion, allegations, statements of opinion or alleged fact 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.

Mr. Davis also again raises the notice mailed by the Local Union to its members at the time the ballots were mailed for the second election. That protest was the subject of the Election Officer's decision in Election Office Case No. P-703-LU406-MGN. The Election Officer found no violation of the Rules. To ensure, however, that the members were not misled or confused as to the reasons for a rerun election, the Election Officer wrote to each member, enclosing a copy of the Independent Administrator's decision affirming the

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copy of the protest must accompany the request for a hearing.

Very truly yours,

  
Michael H. Holland

Enclosure

MHH/ib

cc: Frederick B. Lacey, Independent  
Administrator, IBT  
James DeHaan, Esq.