

October 19, 1995

VIA UPS OVERNIGHT

David Mora
4000 Monroe
Ventura, CA 93003

Sarah Zuniga
1531 North H Street
Oxnard, CA 93030

Scott Dennison, Secretary-Treasurer
Rojelio Hernandez, Vice President
Dave Morrison, Business Agent
Teamsters Local Union 186
1534 Eastman Drive, Suite B
Ventura, CA 93003

**Re: Election Office Case Nos. P-186-LU186-CLA
P-187-LU186-CLA**

Gentlepersons:

Related pre-election protests were filed with the Election Officer pursuant to Article XIV, Section 2(b) of the *Rules for the 1995-1996 IBT International Union Delegate and Officer Election* ("Rules") by Sarah Zuniga and David Mora, members of Local Union 186. Local Union 186 held its vote count for the election of delegate and alternate delegate on October 12, 1995.

Ms. Zuniga and Mr. Mora allege the following violations of the *Rules*: (1) Local Union 186's executive board was denied the opportunity to develop, supervise, observe and approve the printing and design of ballots before the delegate election was held; and (2) the executive board was denied the opportunity to approve the local union's proposed election plan before it was submitted to the Election Office. Moreover, Ms. Zuniga also alleges (3) delegate candidate and Local Union 186 Secretary-Treasurer Scott Dennison utilized union funds to mail campaign literature; (4) Mr. Dennison distributed campaign literature that divulges confidential information relating to charges Ms. Zuniga filed with a state agency against the local union; (5) delegate candidate and Business Agent Dave Morrison campaigned on union time; and (6) an employee of Local Union 186, Ricardo Guerrero, solicited ballots from members in order to collect and mail them.

Because these protests raised similar legal and factual claims, they were consolidated by

the Election Officer. While these protests were filed before the election was held, the Election Officer exercised her discretion under Article XIV, Section 2(f)(2) and deferred making a determination until after the election, treating the matter as a post-election protest.

These protests were investigated by Associate Regional Coordinator Glenn Rothner.

The allegation that the protesters were denied the right to approve the printing and design of the ballots is without merit. Ballot format and design is determined by the Election Officer or her representative, pursuant to the provisions of Article II, Sections 9 and 10 of the *Rules*. The only role afforded IBT members in regards to a ballot's appearance occurs when members run as a candidate for delegate/alternate positions. In this instance, the candidate designates on an Election Office form how their name or slate's name should appear on the ballot. Candidates and/or slate representatives also are given an opportunity to proof the spelling of their names and slate names as they appear on the ballot.

Similarly, the *Rules* do not give the local union executive board a role approving the proposed local union plan submitted to the Election Officer for approval. Rather, as set out in Article II, Section 4 of the *Rules*, only the "Local Union" is required to submit a local union plan to the Election Officer for approval. The election plan forms provided to each local union by the Election Officer require the signature of only the local union's secretary-treasurer. Once a local union plan is submitted to the Election Officer, the local union is required to make the complete plan available for inspection by "any member of the Local Union submitting the plan." Moreover, all local union members have the right to submit written comments on the proposed plan to the Election Officer within 15 days of its submission. Article II, Section 4(d) and (e).

The allegation that Mr. Dennison used local union funds to campaign was not supported by the evidence. Ms. Zuniga's allegations were based on a bulk-rate permit number on envelopes she received from Mr. Dennison. She alleged that the same bulk-rate permit number had been used by the local union to mail literature relating to legitimate union business.

The Election Officer's investigation revealed that no union funds were utilized by Mr. Dennison or his slate to mail campaign literature. The bulk rate permit numbers utilized for both the local union mailing and the campaign mailing belong to Kinko's, a large, multi-location copy and business services company. A receipt from Kinko's detailing that 555 pieces of campaign literature had been sent out through Kinko's, at a cost of 32 cents per piece, was obtained during the investigation. The Election Officer verified that Mr. Dennison was billed for the expenses and that the Kinko's bill was paid with an American Express card belonging to his spouse. Thus, because no union resources were utilized for the campaign mailing, no *Rules* violation occurred.

Ms. Zuniga alleged that campaign literature distributed by Mr. Dennison contained personal, confidential information relating to legal charges she filed against the local union. As the previous Election Officer stated, the "policy of encouraging free and open debate in internal union affairs is consistent with the purpose of the Election Rules." *Meredith*, P-063-LU089-SCE (March 6, 1991) (The Election Officer denied a protest alleging that false statements contained in a candidate's campaign literature violated the *Rules*.) Even untruthful or libelous

statements do not violate the *Rules*. Id. The Election Officer elaborated on this policy in In re Campanella, Election Office Case No. Post-57-LU100-SCE (April 23, 1991), aff'd, 91 - Elec. App. - 144 (SA) (May 7, 1991):

The model for free and fair Union elections is that of partisan political elections. In those elections, contestants are generally allowed to make whatever assertions, allegations, statements of opinion or even of alleged facts 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 . . . Thus, the fact that campaign statements are allegedly false, irrelevant or even defamatory does not remove them from the protection of the *Rules*. (citing National Association of Letter Carriers v. Austin, 418 U.S. 264 (1974).

The *Rules* do not embody a protected right of confidentiality, and Ms. Zuniga has not charged that the opposition candidates purported to speak for the local union. Thus, Ms. Zuniga's charge is without merit.

Ms. Zuniga alleges that Local Union 186 Business Agent Dave Morrison campaigned for the Dennison slate at a United Parcel Service facility in Newberry Park, California. She states that Jeff Bynum, a local union member, was repeatedly contacted by Mr. Morrison by telephone from the local union,¹ and that Mr. Morrison offered Mr. Bynum monetary and travel rewards for his political support in the upcoming delegate election.

The Election Officer considers any allegation that a local union official has used union resources to buy another member's vote to be a very serious matter. The investigation revealed that Mr. Bynum had several conversations with Mr. Morrison before Local Union 186's delegate election. Mr. Bynum is a former political ally of Mr. Dennison's from a previous local union officer election. In the delegate election, however, Mr. Bynum supported Abel Garcia, who opposed Mr. Dennison's slate.

Among the subject matters discussed between Mr. Bynum and Mr. Morrison during these conversations was whether or not Mr. Dennison had reneged on a past promise to send Mr. Bynum to a national grievance meeting in Rhode Island. According to Mr. Bynum,

¹Mr. Bynum claims that he returned Mr. Morrison's phone calls several times by dialing the Local Union 186 union hall, and that is how he knows that Mr. Morrison used union resources to campaign.

Mr. Dennison's broken promise cost him \$800 in pre-paid expenses he incurred due to the incident. Mr. Morrison responded to Mr. Bynum's complaints by offering him trips to St. Louis and Monterey, plus flight and spending money in order to "do what's right," "set things straight," and "get you on our team." Mr. Bynum states that he declined Mr. Morrison's offer and that voting for Mr. Dennison's slate was never mentioned.

These conversations are more accurately characterized as discussions relating to past local union business rather than campaigning. References to the Local Union 186 delegate election were incidental to these conversations which otherwise addressed Mr. Bynum's past affiliation with Mr. Dennison as it relates to legitimate local union business. There is no evidence that the offers made to Mr. Bynum were tied to his support of Mr. Dennison's slate.

Ms. Zuniga's final allegation is that Mr. Guerrero, an employee of Local Union 186, instructed members employed by Nabisco Brands to bring their ballots to work so that he could mail them, and that he visited the home of Rachel Zaragosa and attempted to solicit her ballot. The Election Officer views any attempt by any individual or entity to interfere with a member's right to cast his/her vote to be a very serious matter. In Article II, Section 2, the **Rules** states:

No person or entity shall limit or interfere with the right of any IBT member to vote, including, but not necessarily limited to, the right to independently determine how to cast his/her vote, the right to mark his/her vote in secret and the right to mail the ballot himself/herself. No person or entity may encourage or require an IBT member to mark his/her ballot in the presence of another person or to give his/her ballot to any person or entity for marking or mailing.

Any violation of this rule may result in disqualification of a candidate who benefits from the violation, in imposition of criminal penalties under federal law and/or in other consequence or remedy.

The instructions for balloting included in ballot packages shall contain these prohibitions and shall urge members to promptly vote and return their ballots.

The first paragraph of this section is reprinted in bold type of the ballot sent to each member.

As suggested by the protester, Mr. Rothner attempted to contact Alice Ramirez, who works at Nabisco Brands, to verify the allegation. Despite repeated attempts, Mr. Rothner was unable to speak with Ms. Ramirez. The Election Officer, therefore, has been unable to verify whether or not Mr. Guerrero engaged in the alleged improper activity. The Election Officer therefore finds that Ms. Zuniga has failed to carry her burden of presenting evidence that the **Rules** were violated.

As to the other allegation, Ms. Zaragosa related that two people, one of whom she recognized as a local union employee, visited her home.² The man asked if she had mailed her ballot, and Ms. Zaragosa admitted that she had not. The other person, who Ms. Zaragosa did not recognize and who she described as a “young kid,” then said “jokingly,” that she should give him her ballot. At that point, the man who Ms. Zaragosa recognized, said “No, she’ll mail it.”

Neither the complainant nor Ms. Zaragosa proffered any evidence that Mr. Guerrero was the individual who Ms. Zaragosa spoke with that evening. According to Ms. Zaragosa, the remark about the ballot was made jokingly. Under the circumstances, no solicitation of ballots by a local union official occurred.

Based on the foregoing, Ms. Zuniga’s protest is DENIED.

Any interested party not satisfied with this determination may request a hearing before the Election Appeals Master within one day of 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:

Kenneth Conboy, Esq.
Latham & Watkins
885 Third Avenue, Suite 1000
New York, NY 10022
Fax (212) 751-4864

Copies of the request for hearing must be served on the parties listed above as well as upon the Election Officer, 400 North Capitol Street, Suite 855, Washington, D.C. 20001, Facsimile (202) 624-3525. A copy of the protest must accompany the request for a hearing.

Sincerely,

Barbara Zack Quindel
Election Officer

cc: Kenneth Conboy, Election Appeals Master
Regional Coordinators

²Ms. Zaragosa could not identify the individual she recognized. She stated that she thought his name was “Jesse,” “Juan” or “Jose.”

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