

November 21, 1995

VIA UPS OVERNIGHT

Victor Romero
7750 Willow Creek Drive
Middleton, ID 83644

Walter Engelbert, Secretary-Treasurer
Teamsters Local Union 670
750 Browning
Salem, OR 97302

Re: Election Office Case No. P-220-LU670-PNW

Gentlemen:

A pre-election protest was 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 letter dated November 1, 1995, Victor Romero, a member of Local Union 670, contends that an error contained on the face of ballots mailed to members for the local's delegate and alternate delegate elections disenfranchised Spanish-speaking members. The Election Officer deferred this protest for consideration post-election pursuant to Article XIV, Section 2(f)(2).

Specifically, Mr. Romero states that while ballots were sent to voters in both English and Spanish, the instructions on the Spanish ballot incorrectly indicated that such ballots were to be returned by 9 a.m. on September 28, 1995, rather than on the correct ballot-return date of November 2, 1995. The ballots were not mailed to members until October 13, thus the return date indicated on the Spanish ballot was prior to receipt of the ballots by the voters. Mr. Romero argues that as much as 40 percent of the local union's Spanish-speaking members may have been disenfranchised due to the error. Mr. Romero also states that the address given for requesting duplicate ballots was also incorrectly stated on the Spanish ballot.

Local Union 670 Secretary-Treasurer Walter Engelbert, who is also a member of the winning slate of candidates, responds that the delegate election should not be re-run for the

following reasons: 1) Despite the error in the return date and the name of the Regional Coordinator on the Spanish version of the ballot, the voters were repeatedly advised throughout the election process, in both Spanish and English, of the correct ballot-return date and the correct regional coordinator. Thus, the English and Spanish versions of the local union plan summary and the English and Spanish versions of the notice of election were posted. Both documents had the correct ballot-return date and the appropriate regional coordinator. In addition, in the September 1995 issue of the *Oregon Teamster*, the notice of the election was published in English and Spanish and contained the correct ballot-return date. This publication was mailed to all eligible local union members. Finally, the winning slate of candidates published a campaign flier in Spanish and English which was passed out to thousands of members and stated in large print, "In October Make Your Voice Heard!" 2) Not one member telephoned any of the local union offices and there is no information that any member mentioned to union officer or steward that there were errors on the Spanish version of the ballot or that they were confused as to the appropriate ballot-return date. 3) The protester, Mr. Romero, is English-speaking and voted in the election. 4) The protester has not produced a single witness who did not vote due to the error in the ballot. 5) Any re-run election ordered by the Election Officer will have a different population of members voting because so many of the seasonal employees will have already left the area. 6) The Spanish-speaking members of Local Union 670 have historically had low voter turn-out in elections.

This protest was investigated by Regional Coordinator Christine M. Mrak.

The Election Officer's investigation reveals that Local Union 670's delegate and officer election was conducted by mail-ballot. Each mail packet contained a single ballot. On one side of the ballot, the instructions were written in Spanish and on the other side the instructions were written in English. The instructions specifically indicated by what date such ballots must be received by the Election Officer in order to be counted. The ballot-return date was correctly stated on the English side of the ballot and on the ballot-return envelope. Unfortunately, the return date given in Spanish was incorrectly stated as September 28, 1995, 15 days before the packet was mailed. A clerical error did occur and the **Rules** were violated due to the Election Officer's failure to accurately inform the Spanish-speaking members of the local union when ballots should be returned. This oversight was due to an error at the Election Office. No local union officers or candidates were in any way responsible. Similarly, the Election Officer's investigation reveals that the address given for requesting duplicate ballots on those ballots printed in Spanish was also incorrect.

Ballots were counted on November 2, 1995, with 1,365 members voting. The election was for nine delegate positions and three alternate delegate positions. The results of Local Union 670's delegate and officer election are listed below.

Delegates:

<u>Rank</u>	<u>Name</u>	<u>Vote</u>	<u>Slate or Independent</u>
1	Walter Engelbert	706	The Member's Voice
2	Diana Franken	638	The Member's Voice
3	Barbara Thornton	636	The Member's Voice
4	Charlie Sims	631	The Member's Voice
5	Judy Jones	629	The Member's Voice
6	Betty Buckel	628	The Member's Voice
7	Rita L. Harris	627	The Member's Voice
8	Bernie Stuckert	627	The Member's Voice
9	Debbie Bretnauer	250	Members First
10	Lewie W. Allen	195	Members First
11	Dorothy Skovgard	194	Members First
12	Kenneth Helfer	191	Members First
13	Elisandro (Alex) Urrea, Jr.	191	Members First
14	Tim T. Leonard	185	Members First
15	Zelma F. Colley	182	Members First
16	Joe Wodyga	164	Members First
17	Kerry A. Poppaw	163	Members First
18	Larry Thorpe	142	Independent
19	Roy L. Basl	126	Independent
20	David Silbernagel	111	Independent
21	John Struchen	86	Independent

Alternate Delegates:

<u>Rank</u>	<u>Name</u>	<u>Vote</u>	<u>Slate or Independent</u>
1	Sandy Stewart	733	The Member's Voice
2	Harold Abbot	695	The Member's Voice
3	Bill Gregoroff	688	The Member's Voice
4	Janet Silbernagel	190	Independent

Article XIV, Section 3(b) of the **Rules** provides that post-election protests shall be considered and remedied only 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 (2d 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 L.R.R.M. 2299 (D.C.M.D. Ala. 1989). Since the Election Officer has already determined that the **Rules** have been violated, the issue thus becomes whether the violations affect the outcome of the election.

For the reasons set forth below, the Election Officer determines that the violation

regarding the return date for ballots in the Spanish instructions may have affected the outcome of the election. A total of 14,286 ballot packets were mailed to Local Union 670 members, and each packet contained a single ballot printed in Spanish and English. Some 1,365 ballots were cast and received by the U.S. Postal Service, and the number of valid ballots counted totaled 1,035. This represented 9.55% of the members who were mailed ballots and constituted the lowest percentage of member participation in any of the delegate elections supervised by the Election Officer to date. 377 votes separated the candidate winning the final delegate position and the candidate finishing just behind,¹ and 498 votes separated the candidate winning the final alternate delegate position and the candidate finishing just behind.² Despite these large margins, the Election Officer finds that it is impossible to determine how many of the 13,121 voters who did not cast ballots would have exercised their right to vote if the error in the ballot had not occurred. See Marshall v. American Postal Workers Union, 486 F. Supp. 79 (D.D.C. 1980). The Election Officer recognizes, as argued by the local union, that the voters were repeatedly advised of the correct ballot-return date. That fact, however, does not diminish that a Spanish-speaking voter had an improper ballot-return date in the ballot instructions included on the ballot they were to cast. There is simply no way to discern how many voters failed to cast their ballots due to this error by the Election Office.

Accordingly, the Election Officer concludes that the improper return date on the Spanish side of the ballot may have affected the outcome of the election. Based on the foregoing, the delegate election in Local Union 620 is declared void and a new election, which will be conducted by the Election Officer, is directed. The Election Officer will be in communication with all of the nominated candidates with respect to the details of the re-run election.

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

¹Bernie Stuckart won the ninth delegate position with 627 votes; Debbie Bretbauer tallied 250 votes.

²Bill Gregoroff won the third alternate delegate position with 688 votes; Janet Silbernagel tallied 190 votes.

Victor Romero
November 21, 1995
Page 5

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