

November 16, 1998

**VIA FACSIMILE**

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25 Louisiana Avenue, NW  
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**Re: Election Office Case No. PR-388-EO-EOH**

Gentlepersons:

Diana Kilmury, a member of Local Union 155, an International vice-president at large, and a candidate for that position on the Tom Leedham "Rank and File Power" slate, filed a pre-election protest pursuant to Article XIV, Section 2(b) of *the Rules for the 1995-1996 IBT International Union Delegate and Officer Election ("Rules")* against Election Officer Michael G. Cherkasky. Ms. Kilmury alleges that Canadian members did not receive the Special Election Edition of *The Teamster* until November 6, 1998, four days after the ballots in the International Officers Rerun Election were mailed. Ms. Kilmury contends that this significantly disadvantages Leedham slate candidates in Canada. Ms. Kilmury also contends that she and several other members to whom she has spoken received two ballot packages.

This protest was investigated by Deputy Election Officer Benetta M. Mansfield.

**I. Special Election Edition of *The Teamster***

Immediately upon the United States District Court's approval of the current election timetable on September 14, 1998, the Election Officer began working with the printer of the IBT's magazine to insure that the Special Election Edition of the magazine could reach members' homes around the same time as they received their ballots. The Election Officer worked out a schedule that would have the magazine delivered to member homes on or about October 29, 1998. Therefore, the Election Officer advised candidates and slates that their campaign literature had to be received by September 24, 1998. The Election Officer and the candidates and slates were given the opportunity to review subsequent blue lines and proofs.

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On October 12, 1998, the Election Officer's Campaign Coordinator David Maus was sent to Effingham, Illinois to oversee production of the 1.8 million copies of the Special Election Edition of *The Teamster* at World Color, Inc., the IBT's magazine printing contractor. During the production process, Mr. Maus had several conversations with the company's customer representative in charge of the magazine, Fred Ware. Mr. Maus reiterated the Election Officer's concern that the mailing deadline of October 15, 1998, previously agreed to be strictly observed. The 104,000 magazines for Canadian members were loaded on trucks and transported to the Canadian border on October 15, 1998. The plan was that after clearing Canadian customs, the magazines would go to the IBT's contracted print house in Montreal, Canada for addressing to Canadian members. It was the responsibility of World Color, Inc., to prepare the appropriate documentation for the magazines in order to clear Canadian customs.

On Wednesday, October 21, 1998, David White of the IBT Communications Department telephoned Pierre Pinchet at Teamsters Canada to check on delivery of the magazine. He was advised that the magazine had not yet been received at the Canadian print house and that Teamsters Canada would check on its status. Mr. Pinchet called Mr. White back later in the day to state that the shipment was being held by Canadian customs at the border because the appropriate papers had not been filled out.

Mr. White called and left a message for Mr. Ware on October 21. Mr. Ware advised Mr. White that he would check on the problem and make sure the correct forms got to Canada. On October 23, Mr. White checked the status of the magazine with Mr. Pinchet again and was advised that customs still had not released the magazines. Mr. White called Mr. Ware again. On October 26, Mr. White again contacted Mr. Pinchet and learned the magazines were still at the border. He immediately contacted Mr. Ware's office and was advised that their shipping department was trying to fax the forms to the trucking firm and thought they had been received.

On October 27, the Election Office contacted the IBT Legal Department to get the problem resolved. On October 28, 1998, the Election Officer learned that the magazines still continued to be held up pending an estimate of the commercial value of the shipment. The estimated was provided by Mr. Ware on October 27, 1998. On October 28, 1998, Canadian customs finally released the shipment and it was delivered to print house on October 29.

Due to the tardiness, the Election Officer closely examined the possibility of sending the magazines to members by first class, rather than third class, mail. Using the print-house's pre-existing third class permit, the magazines could be addressed in one day and mailed out and would take anywhere from three to ten days to reach the members, with an estimated four-fifths of the members receiving the magazine by the fourth day after mailing. The print house did not have a first class permit that it could use to cover the mass mailing and advised the Election

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Office that it would have to obtain a first class permit during the first week of November and mail out the magazines. The print house estimated that first class mail delivery would take from two to four days but the magazines probably could not be mailed until November 3 or 4. Based upon this information, the Election Officer decided to mail the magazines by third class mail. All of the magazines were mailed on October 30.

The protester states that she and another member of whom she is aware received their copies of the Special Election Edition of the magazine on November 6, 1998, two days after they received their ballots, but that members in the United States received their magazines as early as October 16, 1998.<sup>1</sup> The protester claims that the late receipt of the magazine in Canada denied Canadian members the right “to generate election awareness and stimulate debate on the candidates’ platforms . . . in this vital period before the ballots were mailed.” Moreover, the protester argues that the superior resources of the Hoffa Unity Slate allowed it to do a mailing to Canadian members prior to the receipt of ballots, therefore the Tom Leedham “Rank and File Power” Slate has been seriously disadvantaged by the late receipt of the magazine.

While the Election Officer agrees that it was unfortunate that the Special Election Edition of *The Teamster* reached some Canadian members homes shortly after the ballots, he does not find that this affected his obligation to insure fair, honest, open and informed elections. First, candidates and slates had been offered a similar opportunity to campaign in the July/August issue of *The Teamster*, and the Leedham Slate had campaign literature in that issue. While the Hoffa Slate may be well-financed in Canada, this is not the issue for the Election Office. The fact is that only late delivery of the magazine equally disadvantaged all candidates who had literature in the magazine. Second, the Election Officer notes that the delivery delay in Canada was due to circumstances which were not within the direct control of the Election Officer. Third, the protester has not shown that the magazine was received after the ballot as a general matter. The magazine was mailed on Friday, October 30, and the ballots were mailed on Monday,

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<sup>1</sup> This information is inaccurate. The magazine was not mailed to IBT members in the United States until October 15, 1998, and was not estimated to reach the bulk of member homes until October 29, 1998.

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November 2. Based on the information about projected delivery times, the great majority of Teamsters Canada members should have received the magazine contemporaneously with the ballot. Fourth, at the latest, the magazine was delivered to Canadian members within a few days after ballots were received and therefore presumably before the majority of Canadian members had cast their ballots. Finally, the Election Officer was advised by Local Union 155 Secretary-Treasurer Tom Milne that Teamsters Canada delivered copies of the Special Election Edition to local unions in Canada and that they have been available at the local unions at least since the third week in October. This, in fact, is the usual method for distributing *The Teamster* in Canada.

In these circumstances, the Election Officer finds that the allegation of the protester does not rise to the level of a **Rules** violation.

## **II. Receipt of Double Ballots by Members in Canada**

The protester alleges that there is “widespread receipt of double ballots” which has caused members to question whether their ballot is secure. During an interview however, the protester acknowledge that she was only aware that some members of Local Union 155 received two ballots.

On or about November 5, 1998, the Election Office received a call from the protester that she had received two ballots. The protester is a member of Local Union 155. On November 6, 1998, Thomas Milne contacted the Election Office stating that he also received two ballots, and was aware that other members of his local union had received two ballots. In subsequent conversations, Mr. Milne states that all of the members of whom he was aware who had received two ballots had names beginning with the letter “M.” On November 9, 1998, the Election Officer send Mr. Milne a letter stating that “[t]he members who received more than one ballots may only send in one ballot to vote. The members should destroy the second ballot because they cannot use it in any way during the election.”

The Election Officer immediately checked the data which was sent to the contractor who ink-jetted voter names onto envelopes and determined that the Election Office data consulting firm had sent an accurate and error-free database to the contractor, *i.e.*, it contained only one record for each member of Local Union 155. The Election Officer directed Regional Coordinator Dolores C. Hall, who oversaw the production and processing of Canadian ballots, to investigate whether two envelopes were ink jet-printed during the envelope run for Local Union 155. Ms. Hall’s investigation did not find a definitive answer to why two ballots were printed for some members of Local Union 155.

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Ms. Kilmury advised the investigator that at the November local union membership meeting, there were numerous members who stated that they had received two ballots, but that Mr. Milne would have this information. Mr. Milne stated that there were eight or nine members at the local union meeting who stated that they had received two ballots. Most of the members names began with "M" but there was a member whose last name was "Chibi" who stated he received two ballots and he recalled that and there were "M" names up to "Munros." He stated that he had not received many calls from members and he estimated that there may be 10 to 12 members who received two ballots. Mr. Milne stated that the members were aware that they should only vote one ballot and that he did not view it as a large problem. He also stated that Ms. Kilmury had announced at the membership meeting that members should only return one ballot.

As of the date of this decision, there have been no telephone calls to the boiler room concerning the receipt of two ballots by members of Local Union 155. The Election Officer has advised Mr. Milne that the members who received two ballots should only vote on one of them and should destroy the other. This information was conveyed by the protester at the monthly membership meeting. This investigation has not revealed a wide-spread problem and no member of Local Union 155 has been denied his or her right to vote. In any event, this error will not result in any member getting to vote more than once. Even if a member were to mail the Election Officer two ballots, the ballots would be challenged, and if challenges need to be resolved, only one ballot will be opened and counted. The Election Officer is satisfied that the procedures used for sending ballots comport with the *Rules*.

Accordingly, this protest is DENIED.

Any interested party not satisfied with this determination may request a hearing before the Election Appeals Master within one (1) 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, 444 North Capitol Street, NW, Suite 445, Washington DC 20001,

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Facsimile (202) 624-3525. A copy of the protest must accompany the request for a hearing.

Sincerely,

Michael G. Cherkasky  
Election Officer

cc: Kenneth Conboy, Election Appeals Master