

"An Injury To One Is An Injury To All"

Pennsylvania Federation

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Office of the General Chairman
Jed Dodd

Overnight Mail and Fax

August 10, 2001

Brotherhood of Maintenance of Way Employees
Mac Fleming, President
26555 Evergreen Road - Suite 200
Southfield, MI 48076

Dear Brother Fleming:

The proposed merger with the International Brotherhood of Boilermakers is a critical event in the history of our great union. You believe that the proposed merger will be good for the union. I believe it will be a serious mistake. However, we should be able to agree that given the tremendous change a merger will bring, it is important that the members decide the issue in a completely free and open referendum.

The purpose of this letter is to discuss the rules by which the referendum vote will be conducted and the ballots counted. This is not like any other referendum the Grand Lodge has conducted in the past, and the union should not simply rely on past practices that may not be appropriate or sufficient for a vote of this importance. This referendum should meet the standards embodied in the Labor Management Reporting and Disclosure Act, the recommendations of the Department of Labor, the practices of the American Arbitration Association, and the experience of the Court-appointed election officers for the International Brotherhood of Teamsters. As a Grand Lodge Executive Board Member and a Federation General Chairman, I believe I have the standing to make these requests.

1. **Eligibility.** It is critical that an eligibility check be part of the election procedure. A fundamental precondition of any honest election is that the election administrator determine that every voter who returns a ballot is eligible to vote. The Department of Labor describes at length the need to verify voter eligibility at the tally

site.¹ The Teamster election rules, approved by the United States District Court, provide, "Prior to the commencement of any count of ballots, the eligibility to vote of each member who cast a ballot shall be verified."²

It is not enough to assume that the ballots returned to the union will be only those genuine ballots mailed to the individual members. Regrettably, there may be some dishonest persons among our members who would seek to influence the election by mailing in ballots from ineligible voters, or sending forged ballots in the names of members who did not, in fact, vote. Without an individual determination as to the eligibility of each voter, this merger vote cannot possibly be certified as fair and honest.

2. **Delancey Printing.** It is my understanding that the Grand Lodge intends to use Delancey Printing Company and/or Merle Delancey (collectively referred to as "Delancey") as the election administrator for the vote. We do not believe that Delancey is acceptable as the election administrator in this matter. First, while Delancey had conducted ratification votes in the past, it is not a professional election administrator. Moreover, as a major vendor for the Grand Lodge, it is all too possible that Delancey will be seen to be biased toward the position of the Grand Lodge officers who favor ratification of the merger.

In addition, Delancey has a disturbing record of breaches of election neutrality. In 1997, the Court-appointed Election Officer for the Teamsters found that, at the request of Martin Davis, Delancey made a payment of \$11,250 to Share Consulting Company in response to an invoice that Delancey knew was fake. *In re Cheatem*, Post-27-EOH (August 21, 1997). Delancey told investigators that he paid the invoice at Davis' request from monies that Delancey owed to Davis from a different business transaction. The monies paid by Delancey were used illegally by Davis and the Ron Carey campaign to influence the 1996 Teamsters election. The money laundering scheme, of which this transaction was a part, resulted in the overturning of the 1996 election, the disqualification of Ron Carey from running for office, and the federal indictment of Davis, Carey, and others. Although Delancey was not charged in the matter, its willingness to pay phoney invoices shows, in my opinion, a lack of judgment and integrity.

More recently, the Election Administrator for the 2001 Teamsters election found that Delancey made two prohibited campaign contributions on the same day to James

¹ Department of Labor, Office of Labor-Management Standards, *Electing Local Union Officers by Mail*, available at <http://www.dol.gov/dol/esa/public/regs/compliance/olms/elecblm.htm>.

² Article V, Section 2 of the *Rules for the 2000-2001 IBT International Union Delegate and Officer Election*.

Hoffa. *In re Tom Leedham Rank and File Power Slate*, 2001 EAD 302 (April 12, 2001).³ The contributions were improper because Delancey is a vendor of the Union. Once again, although the violation of the election rules was charged to the Hoffa campaign and not to Delancey, it demonstrates an apparent inability to be a neutral in internal union matters.

An election of this importance should be conducted by a qualified election neutral. There are a number of professionals who are capable of this task, such as the American Arbitration Association ("AAA"), and we believe that such an organization should be engaged for this task. Delancey should not be used.

3. **Election procedure.** In general, there needs to be a set of clear and detailed written rules governing all aspects of the vote and the count. These should be made available to all interested members and officers in draft form, with an opportunity for comment before final adoption. These rules should reflect such items as:

- form and content of the ballot;
- dates for mailing ballots and last date for receipt of eligible ballots;
- method of reconciling the number of ballots received from the post office with total votes tabulated;
- keeping track of any replacement ballots mailed to members;
- method of determining and challenging eligibility;
- method of determining and challenging ballots as spoiled or invalid;
- procedure for challenging ballots;
- exact procedure for counting and tabulating ballots;
- right of observers at every stage of the count;
- security of ballots after receipt from post office and provision for observers;
- procedure for protesting conduct of election or voting and obtaining relief within the Grand Lodge;
- preservation of all records pending challenges to the conduct of the election.

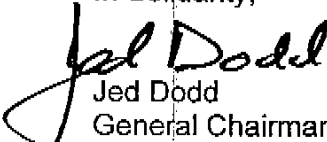
³ I would be happy to supply you with a copy of these Teamster decisions if you so wish.

The Department of Labor makes available guidelines for mail ballot elections, which could easily be adopted for use here. In addition, a third-party election administrator like the AAA would have its own rules and procedures to follow. Without clear and explicit written rules, it is too easy for the election to be improperly influenced by some misguided member or officer who might put the partisan need to win over the obligation to have a fair and free election.

4. **Count by Local Lodge.** During your presentation in Canada on August 8, 2001 I understood you to say that the Grand Lodge would not be counting votes by Local Lodge. If that is correct, I must respectfully object. Segregating and counting ballots by local lodge offers a quick check to observers on the reliability and honesty of the election process. An abnormally high turnout from certain local lodges, or a lopsided vote either for or against the merger could be an important indication of potential vote fraud. The count rules for the 1991 and 1996 Teamsters elections - among the strictest ever devised for a union election - provided for a count by local union. I urge you not to do away with this feature of the election.

Brother Fleming, I look forward to working with you and other officers to establish an election procedure that we can all be proud of, regardless of the election outcome. To that end, I look forward to hearing from your office as to the points raised above.

In Solidarity,


Jed Dodd
General Chairman

cc All Grand Lodge and System Officers