



# LiUNA!

July 10, 2017

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Re: Election Protest – Local Union 737, Portland, Oregon

Dear Brothers and Sisters:

Please find enclosed the Report and Recommendation of the Special Hearings Panel in the above-referenced matter.

With kind regards, I am

Fraternally yours,

TERRY O'SULLIVAN  
General President

/mmt  
Enclosures

cc: Zack Culver, Business Manager, Local Union 737  
Northwest Regional Office  
Special Hearings Panel

*Feel the Power*

Consolidated Election Protests of David A. Clark,  
Jodi Guetzloe Parker, and Carolyn Shaffer  
Local Union 737, Portland, Oregon

July 10, 2017

**Report and Recommendation of the Special Hearings Panel**

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I, Special Assistant to the General President, Vice President and Great Lakes Regional Manager Terrence M. Healy, having been designated to sit as a Special Hearings Panel for the purpose of hearing testimony and receiving evidence, wish to report that on June 26, 2017, a hearing was held at the office of the Oregon and Southern Idaho District Council on the above listed case. The Panel appeared at the hearing telephonically, and was assisted by Associate General Counsel Lisa Pau, who also appeared by telephone.

After completion of the hearing, the Panel reviewed the testimony and evidence. My findings of fact and recommendation are based upon such evidence.

THE PANEL HEREBY FINDS:

1. Local Union 737 is a local that includes both general construction and public employees, based in Portland, Oregon. An election for local union officers was conducted by mail ballot, with ballots to be returned by June 14, 2017. Results of the election were announced on June 15, 2017.
2. Election Judges John Sutherland, Percy Hampton, and Ron Gedenberg certified the results of the election as follows: 402 ballots were received, 382 ballots counted, and 20 ballots voided. The closest margin of victory for any candidate was 41 votes, with Sister Jodi Guetzloe-Parker losing to Greg Held for the office of District Council Delegate by 183 to 224 votes.
3. By emailed letter dated June 15, 2017, Brother David A. Clark protested the results of the election. Thereafter, by letter dated June 18, 2017, Sister Jodi Guetzloe-Parker filed her own election protest and, by letter dated June 21, 2017, Sister Carolyn Shaffer filed a protest as well. Their protests were consolidated for a hearing before this Panel.
4. By letters dated June 21, 2017 and June 22, 2017, General President Terry O'Sullivan notified the interested parties and the Judges of Election that a Special Hearings Panel had been designated to hear the matter. A hearing was scheduled for June 26, 2017.
5. Pursuant to General President O'Sullivan's letter of June 22, 2017, the protesters' claims concerning the nomination process were determined to be untimely. Uniform Local Union Constitution Article XI, Section 8 requires that disputes over the nomination process be filed three (3) business days after candidate qualifications are determined. Here, the nomination process concluded on May 18, 2017, after the Local re-opened nominations for the office of Recording Secretary and candidates were

qualified to run for that office. Thus, disputes over the nominations process should have been filed by May 23, 2017, at the latest.

6. A hearing on the election process was duly conducted on June 26, 2017, as noticed. Brother Clark, Sister Parker, and Sister Shaffer appeared, as did the Judges of Election, Local 737 Business Manager Zack Culver, and International Representative Rey Espinoza. International Vice President and Northwest Regional Manager Robert F. Abbott also appeared at the hearing, by telephone.
7. At the hearing, several disputed issues were clarified and narrowed. Brother Clark presented the basis of his protest first. Although his protest contained numerous allegations regarding improper use of cell phones and other allegedly improper campaign tactics, he stated his primary concerns as follows: (a) The ballot instructions were incorrect and should have advised voters that they did not need to vote for an entire slate. (b) Zack Culver improperly campaigned at two job sites: Turner Construction and J.E. Dunn, on union time and /or with the use of union resources. (c) Ballots were not secure because Election Judge Percy Hampton picked up ballots from the Post Office without notifying the election observers (also known as "watchers"). (d) Some ballots were counted that had not been returned in the "secrecy envelopes" provided (that is, envelopes used within a return envelope to ensure that a cast ballot could not be attributed to any particular voter). (e) On the evening of June 14, 2017, the Election Judges took home the ballots in open cardboard boxes and the next day, re-started the ballot count without notifying watchers. The ballot count resumed the next evening, and caused the General Membership meeting to be postponed by one hour. The count was not completed until very late in the evening of June 15, 2017, after some of the candidates and watchers had to leave the meeting.
8. Sister Parker also stated her concerns: (a) She initially protested the posting of a campaign message to her opponents' Facebook page, believing it had been posted on union time by a union-paid officer or employee. However, during the hearing, she withdrew this aspect of her protest after it was clarified that Brother Culver's wife and the wife of another candidate, Matthew Jensen, were authorized to administer the Facebook page and performed a substantial amount of the posting. (b) A slate affiliation appeared on the final ballot next to the names of certain candidates but when she "previewed" the ballots, she did not see slate affiliations next to any candidates. (c) Campaign literature distributed by her opponents used the LIUNA colors and displayed the name of their slate in a way that improperly suggested an official endorsement. (d) She withdrew her claims regarding job site campaigning. (e) She voiced concerns similar to those of Brother Clark regarding Judge Hampton's retrieval of ballots from the Post Office. (f) She also voiced concerns similar to those of Brother Clark regarding the security of the ballots and the integrity of the ballot count.
9. Finally, Sister Shaffer stated her protest. She, too, had concerns about the integrity of the ballot count and the safekeeping of ballots. She noted that, at several points during the Union meeting on June 15, 2017, John Sutherland, Jr. (son of Election Judge John Sutherland) went over to the room where the Judges of Election were continuing to count the ballots. According to Sister Shaffer, this was improper and no one should have been allowed into the room while the count was underway. She also noted that



- eight (8) members reported to her that they did not receive ballots in the mail. She stated that these members did not wish to give their names, so she could not elaborate.
10. The Panel finds that, although several irregularities were raised concerning this election process, many of them were clarified and explained during the course of the hearing. Persistent concerns remain, however, over the security of the ballot box and major discrepancies in the tally of ballots.
  11. Ballots were initially counted by Election Judges John Sutherland, Percy Hampton, and Ron Gedenberg on June 14, 2017. Sister Parker kept notes of the ballot counts made by Judge Sutherland and Judge Hampton.
  12. Sister Parker's notes reflected discrepancies of 47 votes and more (as much as 84 votes) between the counts for various offices, as arrived at by Judge Sutherland and Judge Hampton. For instance, in the race for Recording Secretary, Judge Sutherland counted 167 votes for Sister Parker and Judge Hampton counted 120 votes. In the race for District Council Delegate, Judge Sutherland counted 294 votes for Matthew Jensen and Judge Hampton counted 247 votes, according to Sister Parker's notes. In the race for Auditor, Judge Sutherland counted 292 votes for Jeff Gritz and Judge Hampton counted 208 votes for him, according to the notes.
  13. Judge Sutherland testified that the Election Judges could not arrive at a consistent tally of ballots, so he ordered a re-count the following day. He and Judge Gedenburg then loaded the ballots into Judge Gedenburg's trunk and left the facility. The ballots were tossed into an open box, left untaped and unsigned. No efforts had been made to secure or safeguard the ballots.
  14. A General Membership meeting was scheduled to begin at 6:00 p.m. the next day, June 15, 2017. The meeting was delayed until 7:00 p.m. because the Election Judges had not finished counting the ballots. The Judges continued to count ballots while the meeting was being conducted in another room.
  15. Late into the night, the Judges tried to reconcile discrepancies between their vote counts. In the end, however, they did not succeed. Judge Sutherland testified that their final numbers were not in agreement but "we agreed to the numbers because they were within 2 to 3 votes." Thus, the Election Judges chose to submit a set of numbers that approximated the final tally, rather than reconcile the differences in their vote counts. Simply stated, this is not acceptable.
  16. The Panel finds that, because the ballot box was not secure on the evening of June 14, 2017, and because of lingering discrepancies in the final vote count, a new election should be conducted with the assistance of the Northwest Regional Office. The Local Union should work in conjunction with the Regional Office to ensure that safeguards are in place to secure the ballots and ensure a reliable, final tally.
  17. In light of this recommendation, the protesters' remaining concerns need not be addressed in depth; nonetheless, some guidance may prove useful. The Panel finds that there was no evidence of improper campaigning by Brother Culver or candidates on his slate. He took vacation days for campaign activities that were documented in his

calendar and pay records. He also admonished his staff on more than occasion that there was to be no campaigning on union time with union resources.

18. The Department of Labor ("DOL") has stated that: "[Union] officers and employees may not campaign on time that is paid for by the union, nor use union funds, facilities, equipment, stationary, etc., to assist them in such campaigning. Campaigning incidental to regular union business would not be a violation [of federal law]." 29 C.F.R. § 452.76.
19. This Union has interpreted the above regulation to mean that brief conversations at job sites pertaining to an officer's candidacy in an upcoming election are permissible. General efforts to encourage members to participate and vote in an officers' election – without campaigning for or against any particular candidate(s) – are also clearly permissible, since such efforts do not amount to campaign activity. The practice of incumbent officers taking vacation time to campaign is widely used and generally acceptable, although it is advisable for officers to keep records and adequately document their vacation leave.
20. As for the claim that the ballot instructions were incorrect, the Panel finds this to be without merit. The DOL's suggestion that "the voting instructions should specifically inform the voter that he need not vote for an entire slate" (29 C.F.R. § 452.112) applies in the context of a ballot providing for slate voting, that is, a ballot that includes a box voters may check that has the effect of voting for an entire slate of candidates. That kind of "slate voting" mechanism was not used here and, thus, the voting instructions quoted above were not relevant to this election.
21. The Panel finds without merit the claim that the name and colors used by Team 737 were improper. Sister Parker has claimed that, because the colors and the name "closely resemble our own organizations color and style" it was "deceiving to rank and file members" and should have been prohibited. Although uses of official union logos on campaign materials have been found to be improper, there is nothing improper about using the same colors our Union commonly uses. Colors are not copyrighted, nor do they carry an official endorsement. The Panel finds no problem with candidates using the colors. Similarly, the name "Team 737" is not improper.
22. Sister Parker's claim that the ballot included a slate affiliation that she did not see when she "previewed" the ballot is also unavailing. She testified that she understood she had the right to form a slate, and she did not wish to be on a slate. She could not identify any particular harm suffered.
23. Sister Shaffer's claim that a person interrupted the ballot count by going into the Judges' room also did not identify any particular harm. She did not allege that ballots had been tampered with, or that the Judges or the count were affected in any way by these interruptions. Given that a new election has been recommended, her claim is now moot. Any remaining claims not addressed herein are also dismissed as moot.
24. Finally, to the extent that ballot secrecy can be preserved and a voter's eligibility verified, the Panel finds no issue with counting ballots that are not returned in the exact envelopes provided. The envelopes provided by the Local Union are included for the



convenience of voters. If it is possible to verify that a particular vote has been cast by an eligible voter, and the secrecy of that vote can be preserved, the vote should be counted. The Local Union should endeavor to honor as many properly cast votes as possible, and refrain from invalidating votes unnecessarily.

25. In sum, the Panel's findings and decision are based on the unusual circumstances surrounding the security of the ballot box on June 14, 2017, as well as the integrity of the vote count on June 14 and 15, 2017. Due to significant issues caused by the Election Judges taking home an open ballot box and then re-starting the vote count, as well as discrepancies in the count documented by a candidate and acknowledged by the Election Judges themselves, the Panel finds it necessary to re-run the election.
26. The Local Union is advised to contact the Northwest Regional Office regarding procedures for a re-run election. It should conduct a new election with the close assistance of the Regional Office.

Accordingly, the Panel

RECOMMENDS:

That the protests be granted in part, to the extent consistent with this Report and Recommendation, and that a re-run election be held as soon as practicable.

In accordance with the provisions of the Constitution, the above Findings of Fact and Recommendations are submitted to the General President for consideration and decision.


Respectfully submitted,

/s/

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Terrence M. Healy  
Vice President, Great Lakes Regional Manager,  
and Special Assistant to the General President

Concurred:



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Terry O'Sullivan  
General President