



OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
25 Louisiana Avenue, NW
Washington, DC 20001
(202) 624-8778
1-800-828 6496
Fax (202) 624-8792

Michael H Holland
Election Officer

Chicago Office:
% Cornfield and Feldman
343 South Dearborn Street
Chicago, IL 60604
(312) 922-2800

February 22, 1991

VIA UPS OVERNIGHT

Earl China
13201 Three Oaks Drive
Jones, Oklahoma 73049

W.S. Cunningham
8912 S. Miller
Oklahoma City, Oklahoma 73159

Charlie Thompson
President
IBT Local Union 886
2528 West Reno
Oklahoma City, Oklahoma 73125

Terry C. Raulston
1024 S.W. 97th Street
Oklahoma City, Oklahoma 73139

Re: Election Office Case No. P-274-LU886-SOU

Gentlemen:

A pre-election protest was timely filed pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*"). In his protest, Mr. Earl China, a candidate for delegate alleges that the *Rules* have been violated because his name was improperly spelled on the ballot. The Election Officer deferred ruling on the protest until after the Local 886 election.

The Election Officer has now concluded the investigation in this case. The evidence shows as follows: The Local 886 delegate election was conducted by mail. The Local is entitled to send six delegates and two alternate delegates to the 1991 IBT International Convention. The ballot contained two slates of candidates, as well as independent candidates. The election results indicate that two votes separated the winning delegate candidate with the lowest number and the losing delegate candidate with the highest number of votes.

Mr. Earl China ran for delegate as part of the Terry Raulston slate. On the ballot, his name is improperly spelled and appears as "Earl Chinn" rather than "Earl China."

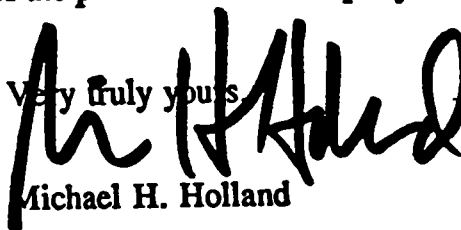
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The Local Union argues that Mr. China has run in another intra-Union campaign, and is therefore so well-known among the membership that his misidentification on the ballot had no effect on the election. The Election Officer does not agree that prior candidacy by Mr. China, however, vitiates his right in this election to be properly identified to the membership on the ballot. The Election Officer notes that in this case the misspelling changed fundamentally Mr. China's surname as it appeared on the ballot, and thus compromised his identification to the voters. The surname "Chinn" is in no way similar to the name "China".¹ In fact the surname "Chinn" is a common name among Asian-Americans. Mr. China is not an Asian-American.

The Election Officer concludes that the misspelling on the ballot of Earl China's name clearly may have affected the outcome of the election. Based on the foregoing, the delegate election in Local 886 is declared void and a new election is directed which will be conducted by the Election Officer. The Election Officer will be in communication with all of the nominated candidates with respect to the details of the rerun election.

If any interested party is not satisfied with this determination, they may request a hearing before the Independent Administrator within twenty-four (24) hours of their 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 Independent Administrator Frederick B. Lacey at LeBoeuf, Lamb, Leiby & MacRae, One Gateway Center, Newark, New Jersey 07102-5311, Facsimile (201) 622-6693. Copies of the request for hearing must be served on the parties listed above, as well as upon the Election Officer, IBT, 25 Louisiana Avenue, N.W., Washington, D. C. 20001, Facsimile (202) 624-8792. A copy of the protest must accompany the request for a hearing.

Very truly yours,



Michael H. Holland

MHH/ads

cc: Frederick B. Lacey, Independent Administrator
Larry R. Daves, Regional Coordinator

¹This differs from a misspelling that does not result in a fundamental change of name, for example Stevens/Stephens, Thomas/Tom or Barbara/Barbra.

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bcc: David M. Ellis
Clark, West, Keller
4800 Renaissance Tower
Dallas, Texas 75270

IN RE:

EARL CHINA,

Complainant,

and

CHARLIE THOMPSON
IBT LOCAL UNION NO. 886

Respondents.

91 - Elec. App. - 84 (SA)

DECISION OF THE
INDEPENDENT ADMINISTRATOR

This matter arises out of an appeal from a February 22, 1991, decision of the Election Officer in Case No. [REDACTED]. A hearing was held before me by way of teleconference on March 1, 1991, at which the following persons were heard: Charles Thompson, the President and Business Agent of Local 886; delegate candidates, W.S. Cunningham and Terry Raulston; and Barbara Hillman, on behalf of the Election Officer.

Earl China, a member of Local 886 and a candidate for delegate on behalf of that Local to the 1991 IBT International Convention, sought a rerun of the election for delegates held by Local 886 because his name appeared on the ballot as "Earl Chinn." Mr. China lost his bid for a delegate position. Mr. Thompson, who was elected to a delegate position in the contested election, objected to the rerun as not warranted because Mr. China was sufficiently well known so that the "typo" of his name would not have affected the vote. In addition, Mr. Thompson alleged that the printing and distribution of the ballots were controlled by the Election Officer and the "typo" was the result of the Election Officer's own error,

thus, the Local should not bear the cost of the rerun. Lastly, Mr. Thompson also argued that Mr. China would have lost even if his name was spelled correctly.

Local 886 has approximately 4,800 members. The election for six delegates and two alternate delegates was held by the Local by way of mail ballot. The ballot listed two slates (the "Terry Raulston" slate and the "Charles Thompson" slate), as well as two independent candidates. Mr. China is appropriately listed with the Terry Raulston slate, but with his surname misspelled as "Chinn." The Final Tally Sheet for the Local 886 election reflects that in ranking of candidates by number of votes, Mr. China ranked twelfth among fourteen candidates. The spread among the top twelve candidates was 214 votes. The difference between Mr. China and the delegate elect with the fewest votes, Roy Hendley, was 91 votes. Mr. Hendley received 754 votes and Mr. China received 663 votes. Only two votes separated Mr. Hendley from the losing candidate with the greatest number of votes, Ron Cobb. The margin of victory between Mr. Hendley and four members of the opposing Terry Raulston slate ranged from only 35 to 48 votes.

As the Election Officer states in his Summary:

In elections governed by the Labor-Management Reporting and Disclosure Act, 29 U.S.C. §§ 401, et seq., it is established that union elections will be rerun if the conduct complained of "may have affected the outcome of an election." 29 U.S.C. §482(c)(2); see also 29 C.F.R. § 452.5. The Rules For The IBT International Union Delegate And Office Election ("Rules") reflects this same standard. Rules, Article XI, Section 1(b)(2).

While the Election Officer does not contend that every spelling error is, per se, grounds for invalidation of an election, the Election Officer concluded that this particular error appears serious enough to generate confusion in the mind of the voting members. As the Election Officer stated, "[i]t is unlikely that all 4,800 plus members of Local 886 knew [Mr. China] personally or would be aware that he was the Earl Chinn listed on the ballot." The Election Officer further recognizes that this matter is additionally complicated by the fact that the name "Chinn" suggests that the candidate was Asian-American. Mr. China is not an Asian-American. This fact further confuses the issue.


Given the misleading nature of the typographical error on the ballot combined with the close election results, the Election Officer ordered that a rerun election must be held. See Rules For The IBT International Union Delegate And Office Election, Article XI, Section 3, which provides as follows:

Should the Election Officer refuse to certify any election, he shall then immediately order that a rerun election be held, including, if necessary, the rerunning of the nomination process. Said rerun nominations and/or elections shall be organized in consultation with the Union but shall be conducted and administered, in their entirety by the Election Officer.

As for Mr. Thompson's objections, the identity of the person who caused the error on the ballot is simply not relevant. The fact remains that the ballot contained an error, and that error likely misled the voters and affected the outcome of the election. The cost associated with rerun does not outweigh the requirement of

an untainted election. Moreover, Mr. Thompson's suggestion that Mr. China would have lost anyway is simply far off-base. The Election Officer has not ordered the rerun election to benefit specifically Mr. China. Rather, the election is being rerun because the error on the ballot may have affected the outcome of the election as it pertains to all candidates.

Accordingly, the Election Officer's decision is affirmed in all respects.



Frederick B. Lacey
Independent Administrator
By: Stuart Alderoty, Designee

Dated: March 4, 1991.