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Michael H. Holland
Election Officer

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March 11, 1991

VIA UPS OVERNIGHT

Art Persyko
c/o New Priorities Slate
1017 Castro Street
San Francisco, CA 94114

Ron Wells
Secretary-Treasurer
IBT Local Union 85
459 Fulton Street
San Francisco, CA 94102

Dave Reardon
c/o New Priorities Slate
640 Waller Street
San Francisco, CA 94117

Re: Election Office Case No. P-607-LU85-CSF

Gentlemen

A pre-election protest was filed pursuant to Article XI, § 1 of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules") by Art Persyko and Dave Reardon, representatives of the New Priorities Slate and members of Local 85. Complainants contend that the delay in mailing ballots to members of Local 85 from February 27, 1991 to March 4, 1991 had an adverse impact upon the New Priorities Slate since their campaign literature was mailed on February 27, 1991 to coincide with the mailing of the ballots.

The Election Plan for Local Union 85 which was approved by the Election Officer indicates that the election would be conducted by mail ballots which would be mailed to each member in good standing on or about February 27, 1991 with the ballots to be due on March 15, 1991. The Regional Coordinator, Donald Twohey, has advised the Election Officer that the ballots were mailed on March 4, 1991, on the fifth day following the projected on or about February 27, 1991 date. As a result, and in accordance with the requirements of Article XII, Section 3(c) of the *Rules*, all members receiving ballots have been informed that the return date has been extended from March 15, 1991 to March 20, 1991.

Complainants contend that the delay in mailing the ballots reduces the effectiveness of the flyers sent by the New Priorities Slate. In addition, Complainants


Art Persyko
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state that the flyers now contain erroneous information as to the mail-out and return date for balloting

In the opinion of the Election Officer, the slight delay in the mailing of the ballots does not significantly reduce the effectiveness of the literature mailed by the New Priorities Slate. At most, the ballots were received a few days after the literature was received. The time between the receipt of the literature and the ballot is minimal, and does not affect the value of the literature, especially since the literature was received prior to the ballot. Further, the fact that the literature may have contained incorrect dates is explained by the notice sent with the ballot. Thus, the Election Officer does not find that the slight delay in the mailing of the ballots harmed or prejudiced the New Priorities Slate in their campaign. Accordingly, the protest is DENIED.

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/mca

cc Frederick B. Lacey, Independent Administrator
Donald E. Twohey, Regional Coordinator

85/CSF

X MHH
BJH
JS

IN RE:

ART PERSYKO,
Complainant,

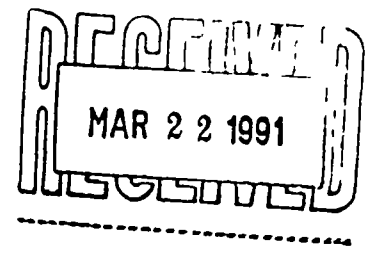
and

RON WELLS
IBT LOCAL UNION NO. 85,

Respondents.

91 - Elec. App. - 103 (SA)

DECISION OF THE
INDEPENDENT ADMINISTRATOR



This matter arises out of an appeal from a March 11, 1991, decision of the Election Officer in Case No. P-607-LU85-CSF. A hearing was held before me by way of telephone conference on March 19, 1991, at which the following persons were heard: John Sullivan, on behalf of the Election Officer; the Regional Coordinator Don Twohey; the Complainant Art Persyko; and Ron Wells on behalf of Local 85.

The Election Plan for Local 85, which was approved by the Election Officer, indicated that the delegate election at the Local would be conducted by mail ballot and the ballots would be mailed to each member in good standing "on or about" February 27, 1991. The ballots were due to be returned on March 15, 1991.

The ballots were actually mailed on March 4, 1991, the fifth day following the projected "on or about" February 27th date. As a result, in accordance with the requirements of Article XII, Section 3.c. of the Rules for the IBT International Union Delegate

and Officer Election (the "Election Rules"), all members receiving ballots were informed that the return date for the ballots was March 20, 1991.¹

The Complainant is a candidate for delegate to the 1991 IBT International Convention on the "New Priorities" Slate. On February 27, 1991, the New Priorities Slate mailed out a campaign flyer. The New Priorities slate chose the February date thinking that this would also be the date the ballots were mailed. It was the intention of the New Priorities Slate that members would receive its flyer at the same time they received the ballots. The Complainant fears that the delay between the members' receipt of its flyer and the members' receipt of the ballot has reduced the "value and effectiveness" of the flyer. The Complainant also alleged that the information included in the flyer as to the return date for ballots was rendered inaccurate by the change in the dates, thus reducing the Slate's credibility in bringing "good reliable" information to the members.

As the Election Officer noted in his Summary:

The Election Officer notes first that the date initially set for mailing of ballots was a projection that allowed for some degree of variance: the mailing was scheduled for "on or about" February 27. The delay until March 4 is a minimal one.

The Complainant contends that although the projected date to mail the ballots was "on or about" February 27, the date that the

¹ Article XII, Section 3 c. of the Election Rules provides that in situations where mail balloting is used the ballot shall include "instructions regarding the procedure for mail ballot voting not less than sixteen (16) days prior to the return date for voting."

ballots needed to be returned -- March 15 -- was not qualified by the "on or about" language. Thus, it is contended that given Article VII, Section 3.c. of the Election Rules the Election Officer had to have insured a sixteen day grace period between the mailing of the ballots and the return of the ballots by mailing the ballots sixteen days prior to March 15, 1991. In making this argument the Complainant ignores both the plain language of the Election Plan as well as the clear intent of that Plan. By qualifying the date the ballots were to be mailed, the return date was also subject to qualification. Thus, for each day the mailing of the ballots was extended the return date for the ballots had to be extended an equal amount, regardless of whether that extension placed the return date past March 15.

In addition, the unyielding suggestion by the Complainant that the New Priorities flyer lost all, or a great portion, of its impact because it was mailed five days before the ballots were mailed is not creditable. First, only the New Priorities Slate availed itself of a campaign mailing. Thus, the New Priorities flyer was the only campaign material received by the members. That the flyer may have been received a few days before the ballot does not impact to any significant degree on the effectiveness of the flyer.²

² The New Priorities flyer was mailed via first class postage. Although the Complainant suggested otherwise, there is no guarantee that the flyer reached the member the day after it was mailed. Accordingly, there is no way of telling when the members received the flyer in relation to their receipt of the ballots.

As for the inaccuracy in the return date of the ballots as reflected in the New Priorities mailing, it is unlikely to reflect adversely on the Slate. All those involved with the election at Local 85 were under the impression that the ballots would be mailed on February 27, 1991. In fact, the magazine of the Western Conference of Teamsters, of which Local 85 is a member, contained a notice that the ballots were to be returned on March 15, 1991. Given the instruction included in the ballot (that the ballot was to be returned on March 20, 1991), it would be clear to the members that the return date was extended by the Election Officer without prior notice.

In short, there is insubstantial evidence to support a finding that the slight delay in the mailing of the ballots harmed or prejudiced the New Priorities Slate in their campaign. Accordingly, the ruling of the Election Officer is affirmed.

Stuart Alderoty 15721
Frederick B. Lacey
Independent Administrator
By: Stuart Alderoty, Designee

Dated: March 21, 1991

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