

OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
25 Louisiana Avenue, NW
Washington, DC 20001

Michael H. Holland
Election Officer

(202) 624-8778
1-800-828-6496
Fax (202) 624-8792

May 22, 1991

VIA UPS OVERNIGHT

Derek Brown
619 Springfield Way
Mill Valley, CA 94941

Ron Wells
Secretary-Treasurer
459 Fulton Street
Room 100-104
San Francisco, CA 94102

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

Michael Thelen
2221 Kenry Way
S. San Francisco, CA 94080

Re: Election Office Case No. P-756-LU85-CSF

Gentlemen:

A protest has been filed pursuant to Article XI, §1 of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*"). In his protest Derek Brown, an unsuccessful candidate for delegate, alleges that Art Persyko, an elected delegate, participated in an appeals hearing before the Independent Administrator, IBT, during paid work time in violation of the *Rules*.

The investigation discloses the following: On May 6, 1991, both Brown and Persyko participated in a hearing conducted by Independent Administrator Frederick B. Lacey. The hearing was held on the appeal of Brown from the decision of the Election Officer during Brown's post-election protest, Election Office Case No. Post55-LU85-CSF.

Brown contends that Persyko's participation in the hearing was in violation of the *Rules* because Persyko was not on lunch or break time during the time that the hearing took place.

Persyko claims that he was in fact on break time during the period of the hearing. He admits that he extended his break by 15 minutes to participate in the hearing, but contends that he was able to complete his work assignments despite the time spent in the

Derek Brown
Page 2

hearing.

The *Rules* prohibit a member from campaigning during time that is paid for by an employer. The *Rules* also prohibit employer financial contributions to the election campaign of any member. *Rules*, Article X.

The Election Officer has previously held, however, that employer or Union contributions will be permitted when such contributions support the resolution of protests, clarification of the *Rules*, or otherwise further the fundamental goal of fair, honest, and open elections. Election Officer decision P-166-LU783-SCE, affirmed by the Independent Administrator in 90-Elec.App.-36.

To the extent that Persyko was on employer-paid time during his participation in the appeals hearing, he was engaged in activity, i.e. participating in a hearing before the Independent Administrator, permitted by the *Rules* to be done on work time. Thus there has been no violation and 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/mjv

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

IN RE:

DEREK BROWN

and

ART PERSYKO

and

IBT LOCAL UNION NO. 85

91 - Elec. App. - 155 (SA)

DECISION OF THE
INDEPENDENT
ADMINISTRATOR

This matter arises out of an appeal from a decision of the Election Officer in Case No. P-756-LU85-CSF. A hearing was held before me by way of telephone conference on June 4, 1991, at which the following persons were heard: the complainant, Derek Brown; Art Persyko, the respondent; Dave Reardon, in support of Mr. Persyko; and John J. Sullivan, on behalf of the Election Officer.

On May 6, 1991, Mr. Brown and Mr. Persyko participated in a hearing conducted by the Independent Administrator. That hearing was held on the appeal of Mr. Brown from a decision of the Election Officer denying Mr. Brown's post-election protest in Case No. Post-55-LU85-CSF. The Independent Administrator affirmed the Election Officer's denial in that matter. See In Re: Brown, 91 - Elec. App. - 145 (SA) (May 7, 1991). Mr. Brown alleges that Mr. Persyko violated the Rules For The IBT International Union Delegate And

Officer Election (the "Election Rules") because he participated in the May 6 hearing during work time in violation of Article X, Section 1.a. of the Election Rules, which prohibits a candidate from accepting campaign contributions from any employer.

Mr. Persyko admits that he participated in that hearing during working hours, but that he was on break time during most of the hearing. It is not disputed, however, that all of the time Mr. Persyko spent participating in the hearing (approximately 20-30 minutes) was paid time.¹

While the Election Rules prohibit employers from contributing to the campaigns of candidates in order to prevent the possibility that they may influence the election, Mr. Persyko's employer did not subsidize his campaign. Rather, Mr. Persyko's employer allowed him to devote a rather minimal amount of work time to participate in the very process established to insure a fair, honest and open election process. See Preamble to the Election Rules.

The Independent Administrator has in the past affirmed the Election Officer's ruling that employer contributions are allowed to support clarification of the Election Rules or resolutions of protests or to otherwise safeguard the election process. See In Re: Lally, 91 - Elec. App. - 36 (January 14, 1991) (Use of employer fax to transmit protests found not to constitute an improper contribution.)

As stated by the Election Officer in his Summary:

¹ Mr. Persyko states that he shortened his lunch hour to make up for the time he spent on the hearing.

As long as an employee's paid time is not made available for hearings on a discriminatory basis, reasonable use for the purposes described herein does not constitute a violation of the Rules.

Here, there is no suggestion that Mr. Persyko's employer allowed its employees to participate in hearings during work time on a discriminatory basis.

Mr. Brown also contends that the Election Officer's decision should be reversed because he did not issue a decision on his protest within five days as provided in Article XI, Section 1.a.(4) of the Election Rules. Mr. Brown states that his protest was filed on May 8, 1991, and the Election Officer did not issue his decision until May 22, 1991. The time limitation set forth in the Election Rules, may, where the interests of justice require, be relaxed. Here, the Election Officer's short delay in issuing his decision does not warrant a reversal of his ruling. Strict application of the time limitations set forth in the Election Rules cannot serve as the basis to overturn a proper application of those Rules. This is not to suggest, however, that an intentional or unjustified disregard of the Election Rule's time constraints may not have adverse consequences in the appropriate case. See, e.g., In Re: Barclay, 91 - Elec. App. - 111 (SA) (March 28, 1991) (Wherein protest deemed to be untimely where complainant intentionally allowed deadline to pass.) See also In Re: Oxner, 91 - Elec. App. - 98 (SA) (March 15, 1991) (Wherein the Independent Administrator found that it was not "necessary to waive the Election Rules' time restrictions regarding protest to 'insure fair, honest and open elections'" in that instance.)

Accordingly, for the reasons expressed herein, the Election Officer's decision is affirmed.

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

Date: June 5, 1991