

***PRE-ELECTION
PROTEST
DECISIONS***

ELECTION OFFICE CASE NOS.

P-801-LU85-CSF to P-835-LU237-NYC

VOLUME XVIII

***Michael H. Holland
Election Officer
June 1992***

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

August 1, 1991

VIA UPS OVERNIGHT

Art Persyko
1017 Castro Street
San Francisco, CA 94114

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

Michael Thelen
c/o IBT Local Union 85
459 Fulton Street
San Francisco, CA 94102

Re: Election Office Case No. P-801-LU85-CSF

Gentlemen:

A 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, a member of Local 85. Mr. Persyko contends that on June 13, 1991 Michael Thelen, a business agent for Local 85, attempted to threaten and intimidate him from participating in the International Union officer election process and from filing protests with the Election Officer.

The protest was investigated by Regional Coordinator Don Twohey. Mr. Twohey contacted Mr. Thelen, who confirmed that he had a heated discussion with Mr. Persyko on or about June 13, 1991 concerning the mailing, to Mr. Thelen's home by Mr. Persyko, of protests against Thelen. Mr. Thelen claims that the receipt of such protests were upsetting his wife. Mr. Thelen advised Mr. Persyko that he should direct protests regarding him to the Union office. Mr. Thelen denies threatening Mr. Persyko or advising Mr. Persyko that he would "get him."

The Regional Coordinator also spoke with Secretary-Treasurer Ron Wells, who heard the discussion between Messrs. Persyko and Thelen. Mr. Wells stated that Mr. Thelen was complaining about his wife being upset by Mr. Persyko's protests, and that Mr. Thelen told Mr. Persyko he should have any protest sent to the Union office. Mr. Wells confirms that the discussion was heated but also states that Mr. Thelen did not make any threats to Mr. Persyko. Mr. Wells spoke with Mr. Persyko immediately after this incident and advised Mr. Persyko that Mr. Thelen was not threatening him.

Art Persyko
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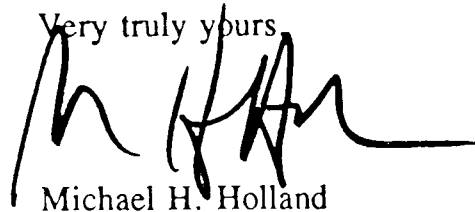
Mr. Persyko agreed that the discussion covered his sending protests to Mr. Thelen's home. However, Mr. Persyko contends that the threat was not connected to the receipt of protests by Mr. Thelen at his home but rather that Mr. Thelen said he would get him if he continued to file protests. Mr. Persyko indicated that the conversation was also overheard by secretary Barbara Moreno.

Ms. Moreno was contacted by Regional Coordinator Twohey, who had stated that she recalls that Mr. Persyko and Mr. Thelen had a conversation in Mr. Thelen's office. However, she did not hear the conversation. Ms. Moreno stated that after Mr. Persyko left Mr. Thelen's office, Mr. Persyko sat on a bench by her desk while some paperwork was being completed and he did not seem to be upset.

Based on the investigation, the Election Officer determines that although heated discussion took place, no threats were made by Mr. Thelen to Mr. Persyko. Obviously, any IBT member is entitled to exercise the rights accorded to him under the *Rules* and to file protests concerning any perceived violations of the *Rules*. However, Mr. Thelen was not arguing with Mr. Persyko about filing protests, but rather about having the protests directed to his home, which was upsetting his wife. The Election Officer would note that the discussion took place in the Union office and that Mr. Thelen did not seek out Mr. Persyko concerning this matter. The Election Officer would also note that this conversation took place shortly after a protest had been filed against Mr. Thelen by Mr. Persyko and mailed by Mr. Persyko to Mr. Thelen's home. Thus the Election Officer does not find that Mr. Thelen threatened or intimidated Mr. Persyko.¹ 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

¹The lack of intimidation is further demonstrated by the immediate filing by Mr. Persyko of this protest concerning Mr. Thelen's comments.

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MHH/mjv

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

IN RE:	:	91 - Elec. App. - 175 (SA)
ART PERSYKO	:	
and	:	
MICHAEL THELEN	:	DECISION OF THE
and	:	INDEPENDENT
IBT LOCAL UNION NO. 85	:	ADMINISTRATOR

This matter arises out of an appeal from a decision of the Election Officer in Case No. P-801-LU85-CSF. A hearing was held before me during which the following persons were heard via telephone conference: the complainant/appellant, Art Persyko; Donald Twohey, the Regional Coordinator; and John J. Sullivan, an attorney with the Election Office. The respondent, Michael Thelen, a Business Agent for Local 85, although provided with notice of the hearing, did not appear.

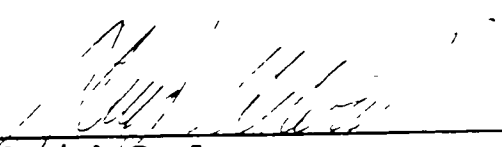
Mr. Persyko is a member of Local 85 and served as a delegate from that Local to the 1991 IBT Convention in Orlando, Florida. Mr. Persyko alleges that on June 13, 1991, Mr. Thelen threatened him and attempted to intimidate him from filing further protests with the Election Office. Following the Election Officer's investigation, which included a personal interview with Mr. Thelen, the Election Officer concluded that while Mr. Thelen had approached

Mr. Persyko in the Union office and asked him not to send any more protests to his home, and that in the future all protests should be directed to the Local's address, Mr. Thelen did not threaten Mr. Persyko or try to intimidate him. While the exchange between Mr. Thelen and Mr. Persyko became heated, the Election Officer did not find that Mr. Thelen violated Mr. Persyko's political rights under the Election Rules.

The findings of the Election Officer are affirmed. The sequence of events here clearly suggests that Mr. Thelen was responding to a recent protest filed by Mr. Persyko. At the hearing, Mr. Persyko had stated that the last protest he filed prior to the June 13, 1991, incident was at least one month before that date. At the hearing, however, the Election Officer referenced a protest filed by Mr. Persyko on June 7, 1991, just one week prior to the June 13, 1991, incident. Upon hearing this Mr. Persyko acknowledged that he had filed a protest on June 7. Mr. Persyko, however, indicated that he had not sent that protest to Mr. Thelen's home, and instead sent it to the Local's address. Given Mr. Persyko's inaccurate recollection regarding the filing of the protest in the first instance, I do not credit his recollection in this regard, and find that the protest was sent to Mr. Thelen's home,¹ thus prompting Mr. Thelen's exchange with Mr. Persyko on June 13.

¹ In fact the Election Officer noted that his protest acknowledgment letter was sent to Mr. Thelen's home.

Accordingly, the decision of the Election Officer denying Mr. Persyko's protest is affirmed.



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

Dated: August 9, 1991