



OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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Washington, DC 20001

Michael H. Holland
Election Officer

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April 19, 1991

VIA UPS OVERNIGHT

Derek Brown
619 Springfield Way
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Secretary-Treasurer
IBT Local Union 55
459 Fulton Street
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Art Persyko
c/o The New Priorities Slate
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San Francisco, CA 94114

Terry Hart
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Daly City, CA 94014

Michael Thelen
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S San Francisco, CA 94080

Gary Canonica
1004 Sycamore Dr.
Millbrae, CA 94030

Lou Marini
1344 Skyview Dr.
Burlingame, CA 94010

Manuel Neves
215 Teddy Ave.
San Francisco, CA 94134

Re: Election Office Case No. Post-55-LU85-CSF

Gentlemen.

Derek Brown filed this pre-election protest pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules"). Mr. Brown, an unsuccessful candidate for election as a delegate from Local 85, alleges that Regional Coordinator Donald Twohey stated just prior to the count of the ballots that he "intended to interpret the intent of the voters" and "any over votes in which a slate is marked will be given to the slate and any independents will be voided." In a subsequent conversation with a staff representative of the Washington, D C office of the Election Officer, Mr. Brown also alleged that observers such as himself at the count were not allowed to observe Mr. Twohey's counting the ballots.

The Election Officer investigation found that, immediately prior to the start of the

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count, Mr. Twohey informed all Local members present, candidates and/or observers, of the methodology to be followed in counting the ballots. Mr. Twohey stated that if a ballot was marked for a slate and also marked for individuals who were not on that slate, the slate would receive the vote. See *Rules*, Article XII, § 5(f). Mr.

Twohey counted all ballots. When so doing, he situated himself so that all candidates or observers who were interested in watching observing could see him and be aware of how he counted each ballot. No objection was raised by any candidate or observer to the way Mr. Twohey credited the vote of any ballot. No member stated that he/she was unable to observe the counting of the ballots.

This Local was allowed to elect two delegates and one alternate, the alternate position was uncontested. There was one slate of two delegate candidates, i.e., a full slate and seven independent candidates. 724 ballots were cast and there were no challenged ballots. The two winning delegate candidates, both members of the single slate, received 227 and 200 votes, respectively. The third place delegate candidate received 179 votes, Mr. Brown received 52 votes. Further, at the count, as noted above, no one challenged the counting of any ballot on the grounds that that ballot had been wrongly credited to one candidate or another.

Article IX, § 7 of the *Rules* provides in pertinent part that "observers shall be permitted to observe the conduct of the election. Observers may challenge the eligibility of any voter to vote. . . Observers shall be permitted to observe. . . the counting of the ballots . . ."

Here, the Regional Coordinator situated himself for the count so that his actions were visible to all candidates and observers, no one at the count stated that they were unable to observe the counting of the ballots. Further, no one protested the crediting of any ballot to any candidate or slate at the time of the count.

Article XII, § 5 (f) of the *Rules* states "if on any ballot the total number of candidate votes exceeds the number of candidates to be elected for such position, that portion of the ballot shall be void, except where a voter has voted for a slate or a partial slate, in which case the slate or partial slate vote only shall be counted." Thus, Mr. Twohey's method of giving credit to the slate where any ballot was marked for the slate as well as individual Candidates was fully consistent with the requirements of the *Rules*.

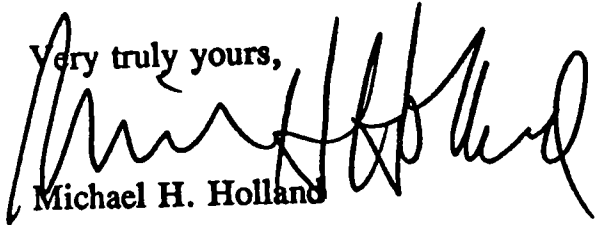
For the above reasons, this protest is DENIED

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,

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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,

A handwritten signature in black ink, appearing to read "Michael H. Holland", written in a cursive style.

Michael H. Holland

MHH/mjv

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

IN RE:	:	91 - Elec. App. - 145 (SA)
	:	
DEREK BROWN	:	
and	:	DECISION OF THE
	:	INDEPENDENT
IBT LOCAL UNION NO. 85	:	ADMINISTRATOR

This matter arises out of an appeal from a Decision of the Election Officer in Case No. Post-55-LU85-CSF. A hearing was originally conducted before me by way of telephone conference on April 24, 1991. The matter was then remanded and a second hearing was held, again by way of telephone conference on May 6, 1991, at which the following persons were heard: the complainant, Derek Brown; Mike Thelen; Ron Wells; Dave Reardon; Art Persyko; John J. Sullivan on behalf of the Election Officer; and Don Twohey, the Regional Coordinator.¹

Local 85 elected two delegates to the 1991 IBT International Convention. Messrs. Persyko and Reardon, ran for delegates spots on the "New Priorities Slate." They were the only two members of that Slate. In addition, seven independent candidates ran for

¹ All of these individuals, with the exception of Ron Wells and Art Persyko, also participated in the April 24, 1991, hearing.

delegate positions. Derek Brown, Ron Wells and Mike Thelen all ran as independents. Messrs. Persyko and Reardon won the election.

As explained by the Election Officer in his Supplementary Summary:

Article XII, Section 5(f) of the Rules For The IBT International Union Delegate And Officer Election ("Election Rules") expressly deals with the question of how votes will be counted when "the total number of candidate votes exceeds the number of candidates to be elected." According to the Rules, if a member casts too many votes and includes both a slate and individual candidates, the slate vote shall be counted. The remaining portion of the ballot will be disregarded.

Prior to the count of ballots on March 20, 1991, Mr. Twohey, the Regional Coordinator, made an announcement consistent with Article XII, Section 5(f) of the Election Rules. Mr. Brown argues that it was improper for Mr. Twohey to "interpret" the intent of the voters. The Election Officer, finding that Mr. Twohey acted consistent with the Election Rules, denied this portion of Mr. Brown's protest. I agree with the Election Officer's disposition.

The Election Rules are clear regarding the method in which ballots will be counted when there is an "over-vote." Mr. Twohey followed the mandate of the Election Rules. Mr. Brown, and the other independent candidates, cannot challenge the outcome of the election based upon the Regional Coordinator's compliance with the Election Rules.

Mr. Brown also contends that the written instructions on the ballots themselves were inconsistent with the Election Rules'

provisions regarding ballot instructions. Article II, Section 8.c. of the Election Rules provides as follows:

Each ballot shall contain the following instructions:

INSTRUCTIONS TO VOTER:

1. Vote for no more than ___ delegate candidates and no more than ___ alternate delegate candidates.
2. You may vote for a full slate.
3. You may vote for a partial slate plus additional candidates, whether or not on a slate, so long as the total number of delegate and alternate delegate candidate votes does not exceed the total to be elected.
4. Instead of voting for any slate or partial slate, you may vote for individual candidates, whether or not on a slate, so long as the total number of delegate and alternate delegate candidate votes does not exceed the total to be elected.
5. By placing a mark in the slate box (or circle), you will have voted for all the individual candidates on that slate.

The instructions on Local 85's ballots simply provided as follows:

1. Vote for no more than two (2) candidates.
2. You may vote for a full slate.

Thus, the ballots did not contain all of the instructions required by the Election Rules. It only contained instructions 1 and 2.

Mr. Brown suggests that by omitting instructions regarding slate voting, the members of Local 85 may have been confused as to the meaning of their vote for a slate. In particular, instruction 5 would have warned individuals that "placing a mark in the slate

box" would yield a vote for all the individual candidates on that slate.

In an effort to determine whether the members who voted were confused, as suggested by Mr. Brown, the Election Officer examined the ballots to determine how many votes were cast for both the New Priority Slate and one or two independent candidates. The Election Officer's review revealed only nine such ballots.² As stated by the Election Officer in his Supplemental Summary, "the number of ballots at issue demonstrates that Mr. Brown's fears about voter confusion are not well-founded."

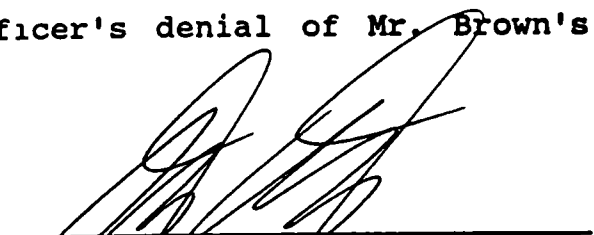
Further, the Election Officer's investigation revealed that "the status of those nine ballots does not affect the outcome of the election." If the slate votes were disregarded on those nine ballots, and conversely, the votes for independent candidates were counted according to the marks on the ballots, the outcome of the election would be the same. In other words, Mr. Reardon and Mr. Persyko would still be the successful candidates.

Thus, Mr. Brown's protest regarding the instructions on the ballots need not be remedied given that the lack of complete

² Mr. Brown argued that the Election Officer's review of the ballots constituted a recount, and, thus, the Election Officer was obligated to afford Mr. Brown, and all other candidates, the right to observe the recount. Mr. Brown mischaracterizes the Election Officer's review of the ballots as a recount. It was not a recount. The Election Officer, in investigating Mr. Brown's protest, reviewed the ballots to determine whether the voters were confused as Mr. Brown alleged. The Election Officer is not obligated by the Election Rules to afford candidates observer rights during such investigations. Cf. Election Rules, Article IX, Section 1.

instructions did not affect the outcome of the election. See Election Rules, Article XI, Section 1.b.(2) ("Post-election protests shall only be considered and remedied if the alleged violation may have affected the outcome of the election").

Accordingly, the Election Officer's denial of Mr. Brown's protest is affirmed.



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

Dated: May 7, 1991