

OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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Michael H Holland
Election Officer

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May 1, 1991

VIA UPS OVERNIGHT

Duane Hart
807 Marvin Way
Hayward, CA 95541

David P Perry
c/o The Ron Carey Reform Slate
820 Lawn Court
Tracy, CA 95376

Joseph Di Prisco
Secretary-Treasurer
The Independent Slate
c/o IBT Local Union 302
492 C Street, Suite A
Hayward, CA 94541

Ralph J Torrisi
Secretary-Treasurer
IBT Joint Council 7
150 Executive Park Boulevard
Suite 2900
San Francisco, CA 94134-3392

**Re: Election Office Case No. Post-68-LU302-CSF
P-675-LU302-CSF**

Gentlemen

A post-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 Duane Hart, an unsuccessful candidate for delegate to the IBT International Convention from Local Union 302. Mr Hart contends that various irregularities in the preparation and mailing of the ballots and the improper conduct of the other two delegate candidates, Joseph Di Prisco and David P Perry affected the results of the election and require that a rerun election be held.

Local Union 302 held its delegate and alternate delegate election exclusively by mail ballot. The ballots were mailed on or about March 13, 1991 and were counted on March 29, 1991. The Local elected one delegate and one alternate delegate to the IBT International Convention. The tally of ballots was as follows:

Delegate Candidates

David Perry	127	(The Ron Carey Slate)
Joe Di Prisco	106	(The Independent Slate)
Duane Hart	52	(an independent candidate)

Alternate Delegate Candidates

Peter Pockels	117	(The Ron Carey Slate)
Manny M Marcos	114	(The Independent Slate)
Victor Mayes	42	(an independent candidate)

In his post-election protest, Mr Hart alleges the following irregularities and/or *Rules* violations

- 1) Many members did not receive their ballots or received ballots late,
- 2) David Perry has been suspended by the Union and is therefore not eligible to run as a candidate for delegate nor serve as a delegate,
- 3) Mr Di Prisco attempted to persuade Mr Hart's employer to exert pressure on him to have him withdraw from the election, and Mr Di Prisco further requested that he, Mr Hart, turn his votes over to Mr Di Prisco to keep Mr Perry from winning,
- 4) David Perry told people to vote for Mr Hart if they were not going to vote for him, Mr Perry,
- 5) Votes for Mr Hart were not counted where the ballot also contained a vote for a slate,
- 6) The ballot instructions were confusing, and
- 7) David Perry had a copy of the ballot prior to it being issued and Mr Hart did not receive a ballot prior to mailing

Pursuant to Article XI, § 1 (b) of the *Rules*, the Election Officer has conducted an investigation into the allegations of the protest. The results of the investigation and the determination of the Election Officer are set forth below

I. Allegations Concerning the Ballot and Voting Procedures

Mr Hart alleges that the ballot, as printed, was confusing. Further he did not receive a prototype of the ballot prior to its printing, although David Perry showed him a prototype that Mr Perry had in his possession. The Election Officer investigation found that the Regional Coordinator, at the time of the nominations meeting for Local 302, gave all nominated candidates a letter advising them of their rights. Among the

rights enumerated in the letter was the right to receive a prototype of the ballot and to observe any aspect of the printing or mailing of the ballots as set forth in the *Rules*. The letter advised each candidate to contact the Regional Coordinator if the candidate wished to avail himself of these rights.

Although Mr. Hart contacted the Regional Coordinator concerning other matters, at no time did Mr. Hart request to be sent a ballot prototype or to observe the mailing of the ballots. As Mr. Hart contends, Mr. Perry, another candidate, did receive a copy of the ballot prototype prior to mailing. However, Mr. Perry contacted the Regional Coordinator and requested the ballot prototype as the letter issued by the Regional Coordinator advised all candidates to do. Thus, the Election Officer does not find that the failure to provide Mr. Hart with the ballot prototype violated the *Rules*.

As to the alleged confusing ballot instructions and configuration, changes might have been made if Mr. Hart had contacted the Regional Coordinator, asked to receive a ballot prototype, received the prototype, and voiced his concerns prior to the time the ballots were printed and mailed. Mr. Hart's failure to do so constitutes a waiver of these portions of his protest.

Further, however, the ballots clearly set forth the slate name selected by Mr. Di Prisco and Mr. Perry as provided in Article II, §8 of the *Rules*. Mr. Hart, not having chosen to seek election as a member of a slate, was listed under the heading of Independent Candidate, also as provided in Article II, §8 of the *Rules*. The ballot was printed in conformity with the *Rules*.

In addition, the Election Officer has reviewed the ballot instructions and finds them to clearly indicate that each member should vote for one delegate and one alternate delegate candidate only. The instructions also clearly state that marking the slate box constitutes a vote for all candidates on that slate. The ballot instructions conform explicitly to the *Rules*, Article II, § 8(c). Thus, the Election Officer finds no irregularities or *Rules* violations in connection with the ballot.

With regard to the ballot process, Mr. Hart alleges that many members did not receive their ballots. He suggests that this may have been due to the submission of an improper mailing list to the mailing house by Mr. Perry and/or Mr. Di Prisco.

The member mailing roster was prepared under the supervision of the Election Officer, sent by the Election Officer to the Regional Coordinator, and submitted by the Regional Coordinator to the mailing house as required by the *Rules*. One thousand ninety-two ballots were mailed, 33 were returned by the post office as being undeliverable. Three were returned with forwarding addresses and therefore were remailed. The return of only 33 ballots as undeliverable does not suggest that numerous members did not receive ballots.

Further, the notice of the nominations meeting and the election notice which were distributed to all members provide that any member not receiving a ballot should contact

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the Regional Coordinator. Seven members did so, including Mr. Hart. No evidence was submitted to support the allegation that numerous members did not receive their ballots.

As noted above, the Regional Coordinator submitted the mailing list which he received from the Washington Office of the Election Officer, where it had been prepared under the supervision of the Election Officer, to the mailing house for the mailing of the ballots. Neither the Local Union, Mr. Perry or Mr. Di Prisco could have tampered or improperly altered the mailing roster. Finally, as also noted above, all candidates were advised of their rights to observe the mailing. Article XII, § 3(c)(2) of the *Rules* provides that observers shall be permitted to observe the mailing process and inspect the list of members to whom ballots are being mailed. Mr. Hart did not choose to avail himself of this opportunity to observe. Thus, the Election Officer, finding no support for the allegation that numerous members did not receive ballots and further, finding that the *Rules* were complied with in all respects, determines that this portion of the protest does not support a finding of a violation of the *Rules*.

In connection with the count, Mr. Hart contends that he lost votes because members voted for him and also a slate. Article XII, § 5(f) of the *Rules* provides that where a voter has voted for a slate or a partial slate and in addition voted for individual candidates so that the total number for which votes were cast would exceed the number of candidates to be elected, that the slate or partial slate vote only is to be counted. Accordingly, the counting procedures utilized at the Local 302 count were in accordance with the *Rules*. Based on the foregoing, the Election Officer determines that there is no evidence of any irregularity in the preparation, wording, mailing, or counting of the mail ballots in the Local Union 302 election. Thus, the protest in connection with these allegations is DENIED.

II. Allegations Concerning the Conduct of Mr. Di Prisco and Mr. Perry

Mr. Hart alleges that Mr. Perry, the successful candidate for delegate, should not have been eligible to run as a candidate for delegate and is not eligible to serve as a delegate due to his having been suspended from membership. The Election Officer has previously determined a protest in connection with the suspension of Mr. Perry. In Election Office Case No. P-675-LU302-CSF, the Election Officer found that the suspension of Mr. Perry by Joint Council No. 7 would not affect his ability to be credentialed if elected as a delegate to the 1991 IBT International Convention. Thus, the Election Officer has already determined that Mr. Perry may serve as a delegate if elected notwithstanding his suspension from membership by the Joint Council.

Mr. Hart also protests the remarks allegedly made by Mr. Di Prisco and Mr. Perry urging voting either for Mr. Di Prisco rather than Mr. Hart or for Mr. Hart rather than Mr. Di Prisco. Candidates for delegate have the freedom to campaign including requesting other members or even opposing candidates to "throw" their votes in one direction or another. Such remarks do not violate the *Rules*.

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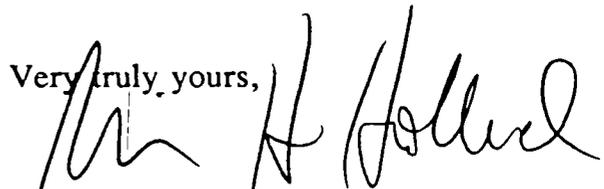
More troubling is the allegation that Mr Di Prisco attempted to influence Mr Hart's employer in an effort to have him withdraw from the election Mr Hart does not allege, and the Election Office had found no evidence, that Mr Hart's employment was adversely affected Since Mr Hart obviously did not withdraw, Mr Di Prisco's alleged attempts to have him do so clearly did not affect the outcome of the election No relief is afforded for post election protests which do not affect the outcome of the election *Rules*, Article XI, § 1(b)

Further, the Election Officer investigation found that Mr Hart first made this allegation on March 18, 1991, five (5) days after the date the ballots were mailed, the investigation found that Mr Hart was aware of these alleged statements by Mr Di Prisco some time prior to March 18, 1991 The Regional Coordinator advised Mr Hart at that time that he had a right to file a protest at that time However, Mr Hart chose not to do so In accordance with Article XI, § 1 of the *Rules* a protest must be filed within 48 hours of the conduct allegedly giving rise to the protest A candidate aware of a purported *Rules* violation, may not wait and then raise the protest after the election is concluded See In Re Barclay, 91-Elec App -111

Accordingly, the protest is DENIED in its entirety

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