

OFFICE OF THE ELECTION OFFICER  
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
25 Louisiana Avenue, NW  
Washington, DC 20001  
(202) 624-8778  
1 800 828 6496  
Fax (202) 624-8792

Michael H Holland  
Election Officer

December 12, 1990

Chicago Office  
% Cornfield and Feldman  
343 South Dearborn Street  
Chicago, IL 60604  
(312) 922-2800

**VIA UPS OVERNIGHT**

Joseph Pecora, Jr.  
Secretary-Treasurer  
IBT Local Union 863  
209 Summit Road  
Mountainside, NJ 07092

Robert Horsewood  
604 Chestnut Street  
1st Floor  
Rosell Park, NJ 07204

Auturo Diaz  
320 Ashton Avenue  
Linden, NJ 07036

Greg Ullrich  
122 Haywood Avenue  
Piscataway, NJ 08854

Jean Lespinasse  
227 S Burnet Street  
E Orange, NJ 07018

Re: Election Office Case No. P-~~076~~-LU863-NJE

074

Gentlemen:

A pre-election protest was filed pursuant to the Rules for the IBT International Union Delegate and Officer Election, revised August 1, 1990 ("Election Rules"). In his protest, Joseph Pecora, Jr., Secretary-Treasurer of Local Union 863, challenges the nomination of Arturo Diaz for delegate to the 1991 IBT International Convention, alleging that Mr. Diaz's nominators and seconder were not eligible to participate in the nomination process in writing. The Election Officer's investigation of this protest revealed the following.

The meeting for nominations of delegates and alternate delegates from Local Union 863 to the 1991 IBT International Convention was held on Sunday, December 2, 1990 at the Local Union hall in Mountainside, New Jersey. The scheduled starting time for the meeting was 11 00 am. Mr. Diaz was nominated for the position of delegate, in writing, by Jean Lespinasse and Robert Horsewood. Mr. Diaz's nomination was seconded, also in writing, by Greg Ullrich. Diaz, Lespinasse, Horsewood and Ullrich are all employed by McDonnell Douglas Truck Leasing at the Shop-Rite Distribution Center in Elizabeth, New Jersey. Lespinasse also has a part-time job on Sunday mornings delivering newspapers.

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In his written nomination of Arturo Diaz, Mr. Lespinasse stated that he was unable to attend the Local Union nominations meeting because of his work schedule. The Election Officer's investigation revealed that Lespinasse is employed delivering papers on Sunday mornings. He begins his deliveries at approximately 7:00 a.m., and completes his route at about 10:30 a.m. After the completion of his route, Lespinasse is required to return his record books to the newspaper terminal in Maplewood, New Jersey. He completes his delivery duties at about 11:15 a.m. to 11:30 a.m. On the morning of the nomination meeting, he was finished at 11:15 a.m.

Mr. Ullrich stated, in his written second of the nomination of Mr. Diaz, that he was unable to attend the Local Union nominations meeting because of his work schedule. Mr. Ullrich was "on call" duty for McDonald Douglas Truck Services from 11 00 p.m. on Saturday, December 1, 1990 to Monday December 3, 1990 at 6 00 a.m. Mr. Ullrich was required to respond to road service calls and had a company vehicle, with his tools, at home for this purpose. Mr. Ullrich understood that he was not permitted to be unavailable for timely response to a call or to use his vehicle for personal reasons. Mr. Ullrich stated that he did not believe that he would be able to attend the Local Union meeting and be available for a timely response to a road call. In fact, on the morning of the nominations meeting, Mr. Ullrich received a road service call at 11 00 a.m., the scheduled starting time of the meeting.

Mr. Horsewood stated, in his written nomination of Mr. Diaz, that he was unable to attend the Local Union nominations meeting because of his work schedule. The Election Officer's investigation revealed that Mr. Horsewood was not working on the day of the nominations meeting. Rather, Mr. Horsewood had a long scheduled social engagement, i.e., tickets to the Christmas show at Radio City Music Hall, that prevented him from attending the nominations meeting. Mr. Horsewood had purchased tickets for the show prior to the issuance by the Local Union of the notice of nominations and election of delegates and alternate delegates.

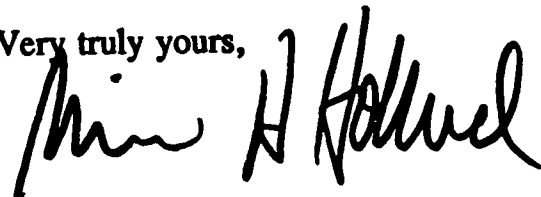
Article II, Section 3(f) of the Election Rules provides, in pertinent part, that members of the Local Union are eligible to nominate or second a nomination in writing if "[s]uch member is unable to attend the nominations meeting(s) in person due to his/her work or vacation schedule, illness, injury, obligation to serve jury duty or fulfill military obligations". Lespinasse was unable to attend the nominations meeting because he was at work at his second job. The term "work schedule" is not limited to a particular job, even the job that serves as the basis of the individual's membership in the IBT. Working at a second job can render a member unavailable to participate in a nominations meeting,

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and make him/her eligible to nominate in writing. Similarly, Ullrich was unable to attend because of his work schedule. Ullrich was on call and he believed that being on call precluded him from attending the meeting. The Election Officer concludes that, under the circumstances, that belief was reasonable. Because the Election Officer concluded that Mr Diaz's nominator and seconder were eligible to participate in the nominations process in writing, it is not necessary to consider the eligibility of Mr. Horsewood.

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  
Election Officer

cc

Frederick B Lacey, Independent Administrator, IBT  
Edward T Ellis, Regional Coordinator