



LIUNA!

TERRY O'SULLIVAN
General President

September 17, 2021

ARMAND E. SABITONI
General Secretary-Treasurer

VIA EMAIL & FACSIMILE

Vice Presidents:

Mr. Jorge Roldan
171-18 103rd Road
Jamaica, NY 11433
local78.roldan@gmail.com

TERRENCE M. HEALY

Judges of Election
c/o Local Union 78
11-17 43rd Avenue
Long Island City, NY 11101
FAX: (212) 406-1800

RAYMOND M. POCINO

JOSEPH S. MANCINELLI

ROCCO DAVIS
*Special Assistant to the
General President*

Re: Decision on Election Protest
Local Union 78, Long Island City, New York

VINCENT R. MASINO

DENNIS L. MARTIRE

Dear Sirs and Brothers:

ROBERT E. RICHARDSON

RALPH E. COLE

Enclosed please find the decision from the Special Hearings Panel regarding the Election Protest at Local Union 78. I have reviewed and concur with the decision.

JOHN F. PENN

With kind regards, I am

OSCAR DE LA TORRE

Fraternally yours,

SERGIO RASCON

ROBERT F. ABBOTT

SAMUEL STATEN, JR.

PAUL V. HOGROGIAN

TERRY O'SULLIVAN
General President

THEODORE T. GREEN
General Counsel

/moc
Enclosure

HEADQUARTERS:
905 16th Street, NW
Washington, DC
20006-1765
202-737-8320
Fax: 202-737-2754
www.liuna.org

cc: Special Hearings Panel
Vice President Pocino
Mr. Pawel Gruchacz, Business Manager, Local Union 78
Robert Cheverie, Esq., Attorney for the Judges of Election
Larry Cary, Esq., Attorney for Jorge Roldan

Feel the Power



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ROCCO DAVIS
*Special Assistant to the
General President*

Dear Sirs and Brothers:

VINCENT R. MASINO

DENNIS L. MARTIRE

ROBERT E. RICHARDSON

The following decision is issued by the Special Hearings Panel on protests regarding the election held at Local Union 78, Long Island City, New York. The decision has been reviewed and approved by the General President in accordance with International Union Constitution, Article VIII, §2 (a-vii).

RALPH E. COLE

JOHN F. PENN

OSCAR DE LA TORRE

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THEODORE T. GREEN
General Counsel

1. Following a July 27, 2021, notice, a hearing on this matter was held by Zoom videoconference on August 23, 2021. Vice Presidents Terrence M. Healy and Rocco Davis served on the Special Hearings Panel. LIUNA Associate General Counsel Lisa Pau advised the Panel.
2. The hearing began at approximately 10:00 a.m. (Eastern Time) and lasted roughly two hours. Sixteen (16) persons attended, including the protester, Jorge Roldan; his attorney, Larry Cary; the Chief Judge of Election, John Keenan; Election Judge Carlos Chahlo; Election Judge Stanislaw Kosiec; attorneys to the Judges of Election, Robert Cheverie and David Cheverie; Regional Manager Raymond Pocino; Kevin Chapman, a representative from Elections USA; and other members of Local Union 78, as noted in the record. A verbatim transcript was taken.
3. The hearing notice advised the parties of their right to make additional submissions in advance of the hearing. The Election Judges and others submitted documents prior to the hearing, as noted in the record.

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4. The Local Union held its election by mail ballot between May 21, 2021, and June 24, 2021. Elections USA was engaged by the Local Union to help administer the election process, at the direction of the Election Judges.
5. The official tally showed each race being won by margins of approximately 500 votes. The race with the closest margin was for Executive Board member, with Anstro Cabrera of the “78 Unity Slate,” prevailing over Manuel Tenesaca of the “Together We Can” slate, by a vote of 750 to 275, or a margin of 475 votes.
6. Candidate Jorge Roldan filed a timely election protest with the International Union, through his attorney Larry Cary. Their July 3, 2021, written protest cited four main issues: (a) the process did not use separate, segregated Post Office boxes for the return of voted ballots, versus the return of undeliverable ballot packages; (b) observers were not afforded the opportunity “to be present for the pickup and remailing of ballot packages”; (c) the return address for prepaid return envelopes containing voted ballots was for an individual named “Luis F. Ordonez Paguay”; and (d) there was a lack of transparency regarding the tally of ballots and the vote count (a request was not responded to, asking for the number of ballots printed and mailed, and the number of unused ballots retained).
7. At the hearing, Brother Roldan stated his general complaint was that rules regarding ballot secrecy were not followed. His attorney, Larry Cary, emphasized that an inventory of ballots printed, mailed, undeliverable, and re-mailed, etc. had not been provided to him. He also reiterated that separate P.O. Boxes were not used for the return of voted ballots, versus undeliverable ballots. Much of the hearing involved Elections USA Director of Election Services Kevin Chapman, walking through the procedures used in this election. His report, dated July 7, 2021, was accepted by the Panel as part of Hearings Panel Exhibit 1.
8. As Mr. Chapman and the Judges of Election reported, each slate designated several watchers/observers and no complaints about the process were lodged while the election was underway. The question for the Panel is whether certain technical deficiencies identified by Brother Roldan after the election, in his written protest, were serious enough to have compromised the secrecy or integrity of the election. We conclude that they were not.
9. One of the first concerns raised by Mr. Cary and Brother Roldan appears to have been based on a misunderstanding of procedures. Citing Exhibit “A” to their protest letter, an envelope with a return address for Mr. Luis F. Ordonez Paguay, Mr. Cary and Brother Roldan questioned why this individual should receive any returned ballot envelopes. At the hearing, Mr. Chapman explained that the return address on the outer ballot envelope was specific to each voting member, as was the bar code appearing next to it. Among other things, this ensured a proper eligibility check when the ballot envelope was tabulated by the Election Judges and Elections USA. In other words, the return address was unique to each voter; Mr. Ordonez would receive only his own ballot envelope in the event it was not delivered by the Postal Service. This is a common procedure in mail ballot elections that use the “double envelope” system, explained in detail by Mr. Chapman at the hearing. The Panel concludes it did not

affect the secrecy of the ballots, nor the integrity of the election to use this system (the outer envelopes were discarded and separated from the inner “secrecy” envelopes containing ballots, prior to the votes being counted).

10. In addition, Mr. Chapman provided a verbal report at the hearing, consistent with his written July 7, 2021, report, of the total number of ballots printed, mailed, re-mailed, returned as undeliverable, and unused. His report, together with the Election Judges’ Final Report, and the official tallies, served as an inventory of the ballots. If the information was not provided prior to the appeal, it was certainly distributed to Brother Roldan and his attorney upon the processing of Brother Roldan’s appeal by the International Union, as the relevant documents were included with the hearing notice and distributed prior to the hearing.
11. No one at the hearing questioned the accuracy of the ballot inventory numbers recounted by Mr. Chapman, nor did the numbers change. Mr. Cary and Brother Roldan failed to identify any prejudice stemming from not having received the information sooner. Accordingly, we dismiss the last two claims raised in the written protest since they were fully addressed at the hearing.
12. Turning to the two remaining issues, the logistics of mail-ballot voting are highly technical. A number of “guides” have been created to assist local unions in properly carrying out a mail-ballot election process. LIUNA’s Election Guide treats the mail-ballot process in detail in chapter 10. The U.S. Department of Labor (DOL) also publishes an election guide that includes a section on “Electing Local Union Officers by Mail.” The guides are non-binding and primarily intended to assist election officers; they are not a substitute for the law. Ultimately, the legal requirements are contained in Title IV of the Labor-Management Reporting and Disclosure Act (LMRDA), the DOL’s implementing regulations, and Union constitutions that are binding on International and Local Unions as a matter of internal governance.
13. Mr. Cary was correct to point out that both the LIUNA and the DOL election guides recommend the use of separate P.O. Boxes for the return of completed, voted ballots, versus undeliverable ballot packages. While the Panel would have preferred that these guidelines were followed, here it made no difference in the outcome of the election. Neither Brother Roldan nor his legal counsel could identify any prejudice or effect on the election results. We find none as well.
14. Mr. Chapman explained that Elections USA has over 20 years of experience administering elections, including expertise in elections for labor unions. Although it sometimes works on more than one election at a time, he testified that Elections USA did not have any other mail-ballot elections ongoing at the time of the Local Union 78 election. Moreover, ballot envelopes for various organizations are clearly marked and easily identifiable. The company’s reliance on its business address in Quakertown, Pennsylvania as the return address on mailed ballot packages was a harmless error. The Panel believes that the intent of the advice to use separate P.O. Boxes is to prevent ballots from being intermingled with a Local Union’s general mail. It also ensures that only authorized individuals are allowed to

access returned ballots and undeliverables. Neither of these concerns were at issue here, since all election materials went to either the U.S. Post Office or Elections USA in Pennsylvania, and not to Local Union 78 in New York. The Panel finds there was little to no likelihood of confusion arising from the failure to establish separate P.O. boxes here. This claim is dismissed.

15. The analysis is similar for the remaining allegation. Mr. Chapman testified that he provided “undeliverable mail logs” to Election Judges on multiple occasions throughout the voting period. The Judges and the Local Union made good faith efforts to update voter addresses and send updates to Elections USA for remailings. According to Elections USA records, 19 ballot packages were returned as undeliverable and 98 remailings were sent, some on account of voters contacting the Judges directly for ballots not received, spoiled, etc. Even if the undeliverable mail logs had been provided and each of these ballots were called into question, or the votes presumed to have gone to a challenger, only 117 votes would be affected. This would have no effect on the outcome of any race. Accordingly, the Panels finds that the failure to allow watchers to witness the remailing process was also a harmless error.¹

16. For the reasons stated herein, the Panel finds that the objections claimed by Brother Roldan and his legal counsel, Mr. Cary, are without merit. Having carefully considered the testimony and evidence presented, the Panel concludes the results of the election at Local Union 78 should stand.

With kind regards, we are

Fraternally yours,

/s/

TERRENCE M. HEALY
Vice President

/s/

ROCCO DAVIS
Vice President

/moc

cc: Vice President Pocino
Mr. Pawel Gruchacz, Business Manager, Local Union 78
Robert Cheverie, Esq., Attorney for the Judges of Election
Larry Cary, Esq., Attorney for Jorge Roldan

¹ The July 3, 2021, protest letter claimed: “it would have been impossible for the system to comply with the law” since Elections USA is in Pennsylvania, “a two-hour drive of over 100 miles from where Local 78 and its membership are in New York City.” The Panel notes that, presumably, proceedings could have been conducted using Zoom or other videoconference technology to allow watchers to observe certain aspects of the remailing process. We question whether such lengths are necessary when an election service is used for a mail ballot election, as it was here. The Panel does not share Mr. Cary’s belief that the system “failed to comply with the law.” Nonetheless, the undeliverable logs could have been provided to the candidates’ watchers.