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Election Officer

November 2, 1990

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Thomas H Dimino
David L Ring
William R. Stigall
Nelson Calogne
c/o IBT Local Union 435
2941 West 19th Avenue
Denver, Colorado 80204

Re: Election Office Case No. P-025-LU435-RMT

Gentlemen

A pre-election protest has been filed by the complainant, Ruben Zeller, pursuant to Article XI, § 1 of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules* "). The complaint alleges five violations of the *Rules* arising out of a nomination meeting conducted by the Election Officer Regional Coordinator in accordance with the orders of Independent Administrator Frederick B Lacey in a previous appeal by Mr Zeller of a decision of the Election Officer concerning the nominations of Thomas Dimino and David Ring, 90-Elec App.-4 ("Zeller Appeal") The protest also requests a verification of eligibility of the nominated candidates, nominators and seconders who were nominated or nominated and seconded candidates at the nominations meeting Based upon the investigation of the complainant's protest, the rulings of Independent Administrator Lacey and Judge Edelstein and upon the *Rules*, the Election Officer hereby denies the instant protest

The first alleged violation of the *Rules* contained in the complainant's protest is the alleged failure to conduct the special nomination meeting within 48 hours of the Independent Administrator's decision in the Zeller appeal The decision in the Zeller

November 2, 1990

Page 2

appeal was received by the Election Office on Wednesday, October 24, 1990 at approximately 4 35 p m , eastern time The special nomination meeting was conducted on Saturday, October 27, 1990 at approximately 10 00, mountain time

The *Rules* do not require that nomination meetings take place on a particular day or at a particular time. The *Rules* require Local Unions, that are electing delegates in the fall election cycle, to conduct nominations in September, October or November of 1990 The requirement that the special nomination meeting at issue here be conducted within a within 48-hour period was contained in the order of the Independent Administrator issued in the Zeller appeal That order was modified by the Independent Administrator, with notice to all parties, on October 25, 1990 to permit the holding of the special nomination meeting on October 27, 1990 at 10 00 a m Mr Zeller was present at the meeting

The complainant objects to the location of the special nomination meeting at a hotel in downtown Denver The site of the special nomination meeting was approved by the Independent Administrator on October 25, 1990 All interested parties were informed of the time and place of the meeting by the Election Officer by telegram on the evening of October 25, 1990 On the morning of October 26, 1990, Bruce Boyens, the Election Office Regional coordinator, called each of the interested parties, including Mr Zeller, and informed them of the time and place of the special nomination meeting Previous to that telephone call, on the evening of October 25th, Mr. Boyens had left a message on Mr Zeller's answering machine regarding the time and place of the meeting. Mr Zeller and his attorney called the Election Office on Friday, October 26, 1990. However, Mr Zeller did not object to the location of the meeting prior to the start of the meeting on October 27, 1990, nor has he substantiated his claim that the hotel where the meeting was held "would be difficult for members to find"

The complainant objects to the adequacy of the notice of the special nomination meeting The *Rules* require that the Local Union give its members notice of nomination meetings by means "reasonable calculated to inform all members in sufficient time to permit them to nominate" Article II, § 3(d) The complainant does not object to the notice of the original nomination meeting Clearly, any member of Local Union 435 who wished to nominate candidates was adequately informed of the time and place of the nomination meeting Rather, the complainant objects to the notice of the special nomination meeting ordered by the Independent Administrator

As stated above, each of the interested parties in the Zeller appeal received notice of the time and place of the special nomination meeting by telegram on the morning of October 25, 1990 and by telephone on the morning of October 26, 1990 In addition, the Regional Coordinator posted a notice of the special nomination meeting at the Local Union bulletin board It cannot be disputed that all of the interested parties in the Zeller appeal received adequate notice of the special nomination meeting

The complainant also objects to the special nomination meeting because to the absence of a quorum. Section 18(C) of the By-Laws of Local Union 435 establishes a quorum requirement of ten members at a regular general membership meeting or a special meeting called by the local in response to a petition of the membership. The nomination meeting at issue in this protest was neither a general membership meeting or a special membership meeting call at the request of the membership of Local Union 435. Rather, this nomination meeting was held pursuant to an order of the Independent Administrator pursuant to the *Rules*. Judge Edelstein, in his November 1, 1990 ruling on Mr. Zeller's motion for a preliminary injunction, held that "the authority of the Independent Administrator to order the special meeting is clear from the election rules" Slip op, p 4. Because the special nomination meeting was not convened by the Local Union it is not subject to the Local Union's by laws requiring a quorum.

Further, the Consent Order requires that all IBT members be permitted to participate in the 1991 IBT International Convention by directly electing the members, the delegates, who will represent them at that Convention. Without nominations of delegates and alternate delegates, there will be no candidates to stand for election. The membership of the Local Union would be disenfranchised and unrepresented at the IBT Convention. To prevent such disenfranchisement, the nomination meetings must be held as scheduled regardless of whether the Local Union's quorum requirements are met.

Finally, the complainant objects to the meeting because Tom Dimino, David L. Ring, William Stigall and Nelson Calogne were nominated to the positions of delegate and alternate. This claim was rejected by Judge Edelstein in his order denying Mr. Zeller's motion for a preliminary injunction. Judge Edelstein held that the Independent Administrator's order, requiring an open nomination meeting at which anyone could be nominated for delegate or alternate, was consistent with the underlying philosophy of inclusiveness rather than exclusiveness in the *Rules*.

In response to Mr. Zeller's inquiry regarding the eligibility of Dimino, Ring, Calogne and Stigall to run for delegate or alternate delegate, the Election Officer finds that each candidate has been a member in good standing of the Local Union for a period of twenty-four consecutive months prior to the month in which the nomination meeting took place. See generally, *Rules*, Article VI, §§ 1 and 2. Similarly, the Election Officer found that Dimino, Ring, Calogne and Stigall were eligible to serve as nominators or seconders for the position of delegate and/or alternate delegate because each was a member in good standing with dues paid through the month prior to the month in which the nomination meeting took place. See, *Rules*, Article II, § 2(h).

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

November 2, 1990
Page 4

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, N J 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
Bruce Boyens, Regional Coordinator