



OFFICE OF THE ELECTION OFFICER  
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Michael H Holland  
Election Officer

November 26, 1990

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Richard Ward  
513 Route 211E  
Middletown, N Y 10940

Adrian Huff  
84 Country Club Drive  
Florida, N Y 10921

Re Election Office Case No P-043-LU445-NYC

Gentlemen

A pre-election protest was filed pursuant to Article XI of the Rules for the IBT International Union Delegate and Officer Election, revised August 1, 1990 ("Election Rules") In his protest the complainant, Richard Ward, alleges that Adrian Huff was nominated for the position of delegate to the 1991 IBT International Convention, in writing, by a member who was not eligible to do so The Election Officer's investigation of the protest revealed the following

The meeting for nominations for delegate and alternate delegate to the 1991 IBT International Convention from Local Union 445 was held at the Local Union Hall in Newburg, N Y on November 9, 1990 Mr Huff's name was placed in nomination and seconded by two members of the Local Union who were not actually present at the meeting but who participated in writing, purportedly in accordance with Article II, Section 3 (f) of the Election Rules The complainant alleges that the member who nominated Mr Huff, Kenneth Bernhard, was not eligible to do so by mail because he did not live and work more than 35 miles from the site of the nominations meeting, and because he was not prohibited from attending the meeting by his work schedule, vacation or by illness

The site of the nominations meeting is approximately 23 miles from the site of Mr Bernhard's employment, TRR Carriers, 2 Ballard Road, Middleton, New York Mr Bernhard was not ill, nor on vacation, military or jury duty at the time of the nomination meeting Mr Bernhard's stated justification for participating in the nomination meeting in writing was "[b]ecause of my work schedule" Mr Bernhard finished his shift at approximately 5 00 pm on Friday evening and the nomination meeting commenced at approximately 8 00 pm later that same evening Mr Bernhard was not scheduled to return to work until 3 30 am on the following Monday

Article II, Section 3 (f)(1) of the Election Rules permits a member to nominate or second a member in writing if they are unable to attend the nomination meeting because of, inter alia, their work schedule The Election Officer has interpreted

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this rule to permit written nomination, seconds, and/or acceptances when a member's work schedule is such that he/she would normally be sleeping or commuting to work at the time during which the nominations meeting is scheduled. Clearly, Mr. Bernhard was neither at work nor commuting to work at the time of the meeting. Moreover, because he was not required to report to work until Monday morning, over 55 hours after the scheduled start of the nominations meeting, he could have attended the meeting without interfering with his normal sleep time.

Because Mr. Bernhard was not entitled to nominate Mr. Huff in writing, and because Mr. Huff was not nominated by any member other than Mr. Bernhard, Mr. Huff's nomination is void.

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 / JSS*

Michael H. Holland  
Election Officer

cc Frederick B. Lacey, Independent Administrator, IBT  
Amy Gladstein, Regional Coordinator

IN RE:	:	90 - Elec. App. - 16(SA)
	:	
RICHARD WARD	:	DECISION OF
and	:	THE INDEPENDENT
ADRIAN HUFF	:	ADMINISTRATOR

This arises out of a protest filed by Richard Ward, a member of, and shop-steward at, Local Union 445. A hearing was held before me, by way of teleconference, on November 29, 1990, at which the following persons were heard: Daniel L. Sapir, Esq., on behalf of Mr. Ward; Adrian Huff; Daniel E. Clifton, Esq., on behalf of Respondent Adrian Huff; John Sullivan, Esq., for the Election Officer; James Reif, from the Election Office; and Amy Gladstein, the Regional Coordinator. The facts of this matter are simple and undisputed. As stated in the Findings of Fact in the Election Officer Summary:

1. The meeting for nominations for delegate and alternate delegate to the 1991 IBT International Convention from Local Union 445 was held at the Local Union hall in Newburgh, N.Y. on Friday, November 9, 1990. The nominations meeting began at approximately 8:00 P.M.

2. The time and place of the nominations meetings was previously announced to the members of Local Union 445 in, *inter alia*, a notice of nominations and election which was mailed to their homes.

3. Adrian Huff, Kenneth Bernhard and Dennis Gregory are members in good standing of Local Union 445.

4. Mr. Huff was present at the nominations meeting and his name was, by letter, placed in nomination for the position of delegate to the 1991 IBT Convention by Mr. Bernhard. The nomination was seconded, by letter, by Mr. Gregory. Neither Bernhard nor Gregory were present at the meeting.

5. In his letter nominating Mr. Huff, Mr. Bernhard states that "[b]ecause of my work schedule, I am putting my nomination in writing, as allowed in the Rules for Delegate and Officer Election, Article II, Section F (1)."

6. Mr. Bernhard's work location, TRR Carriers, 2 Ballard Road, Middletown, New York, is approximately 23 miles to the Local Union Hall. He was not at work, on vacation, sick, disabled, on jury duty or military service at the time of the nomination meeting.

7. Mr. Bernhard's works a five (5) day week, Monday to Friday. His regular starting time is 3:30 a.m. He gets up at approximately 2:00 a.m. to go to work. Mr. Bernhard is a driver and usually works longer than an eight hour day.

8. On the day of the nomination meeting, Friday November 9, 1990, Mr. Bernhard worked until approximately 5:00 p.m. He was not due to report back to work until 3:30 a.m. on Monday morning, November 12, 1990.


Article II, Section 3 (f) (1) of the Election Rules provides that a member eligible to nominate or second a nomination may do so in writing prior to the nominations meeting if: "such member is unable to attend the nominations meeting in person due to his/her work or vacation schedule. . . ." The Election Officer has reasonably interpreted this provision "to permit written nominations, seconds, and/or acceptances when a member's work schedule is such that he/she would normally be sleeping or commuting to work at the time during which the nomination meeting is scheduled." [Emphasis supplied].

Amy Gladstein indicated that she initially issued this interpretation on behalf of the Election Office in response to an inquiry by Mr. Huff. Mr. Huff testified that he made the inquiry

anticipating the very situation that infact arose. The interpretation of Section 3 (f) (1) given by Ms. Gladstein to Mr. Huff is not as narrow as the position taken by the Election Officer in this proceeding. The Election Officer now seeks to limit the words "normally be sleeping" to situations where an individual must work the following day. The Election Officer's original interpretation is much broader, and more reasonable. A "member's work schedule" may result in his sleeping on a Friday evening, even if he did not have to work the following day. Mr. Huff's and Mr. Bernhard's reading of Ms. Gladstein's interpretation in this way was proper.

Mr. Bernhard's situation is a ready example. He worked driving a truck from approximately 3:30 a.m. early Friday morning (getting up at approximately 2:00 a.m.) until approximately 5:00 p.m. on Friday afternoon -- a total of 13-1/2 hours. Certainly, given this work schedule, one would "normally be sleeping" by 8:00 p.m. that night, regardless of whether the next day was a work day or an off day.

For the reasons expressed, I reverse the decision of the Election Officer and find that Mr. Bernhard properly nominated Mr. Huff.



FREDERICK B. LACEY  
Independent Administrator  
By: Stuart Alderoty, Designee

Date: November 29, 1990