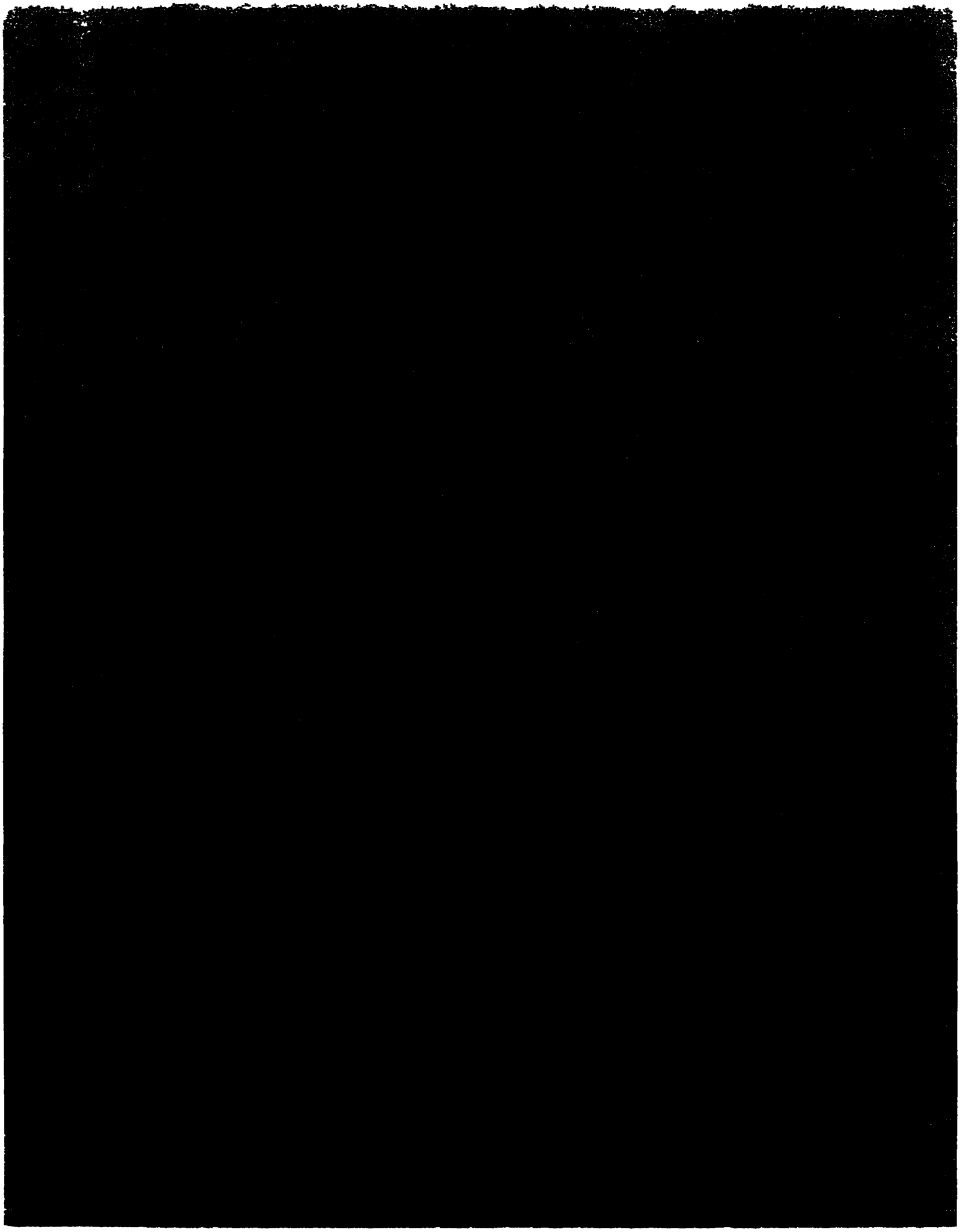

OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
25 Louisiana Avenue, NW
Washington, DC 20001
(202) 624-8778
1-800-828-6496
Fax (202) 624-8792

Michael H Holland
Election Officer

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

February 7 1991

VIA UPS OVERNIGHT

John Cetinske
15764 Arbolada Lane
Victorville CA 92392

Robert Marciel
Secretary Treasurer
IBT Local Union 63
1616 W Ninth St.
Room 205
Los Angeles CA 90015

Bill Murray
IBT Local Union 63
1616 W Nnth St
Room 205
Los Angeles CA 90015

Bob Stuver
IBT Local Union 63
1616 W Ninth St
Room 205
Los Angeles CA 90015

Re Election Office Case No P 288-LU63-CLA

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 (*Rules*). In this protest Mr John Cetinske alleges that the *Rules* have been violated because the campaign literature has been removed and rearranged by shop steward Bob Stuver

In an earlier decision (P-055 LU63-CLA) the Election Officer directed that one-half of the Union bulletin board at the Roadway facility in Adelanto California be dedicated for campaign purposes This instant protest was filed after the initial decision was rendered Adjunct Coordinator Gerry Fellman investigated the protest for the Election Officer During the investigation all parties agreed with him that the campaign half of the bulletin board would be dedicated by quadrants with each candidate's campaign having access to one quadrant Local 63 agrees that the Cetinske campaign will have access to the lower right quadrant of the bulletin board at Roadway Mr Cetinske informed Mr Fellman that the lower right quadrant was sufficient for his campaign needs

In accordance with the foregoing, the Election Officer considers this protest to be resolved.

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/mca

cc: Frederick B. Lacey, Independent Administrator
Geraldine Leshin, Regional Coordinator

OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
25 Louisiana Avenue, NW
Washington, DC 20001

Michael H Holland
Election Officer

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April 19, 1991

VIA UPS OVERNIGHT

John Cetinske
15764 Arbolada Lane
Victorville, CA 92392

Robert Marciel
Secretary-Treasurer
IBT Local Union 63
1616 W. Ninth St.
Room 205
Los Angeles, CA 90015

John DeWorken
Business Agent
IBT Local Union 63
1616 W. Ninth St
Room 205
Los Angeles, CA 90015

Margaret Peterson
14327 Jicarilla Rd
Apple Valley, CA 92307

Roy Dale Jones
14327 Jicarilla Rd.
Apple Valley, CA 92307

Re: Election Office Case Nos. P-055-LU63-CLA
P-288-LU63-CLA
P-690-LU63-CLA
Post-61-LU63-CLA

Ladies and Gentlemen

A pre-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 John Cetinske, a candidate for delegate to the 1991 IBT International Convention from Local Union 63 The protest alleges that John DeWorken, a business agent for Teamsters Local 63, removed campaign materials which Mr Cetinske posted on the bulletin board at his place of employment, Roadway Express in Adelanto, California in violation of the determinations of the Election Officer in Case Nos. P-055-LU63-CLA and P-288-LU63-CLA, both of which concern the use of this bulletin board The protest also contends that campaign literature being distributed by the Informed Teamsters For

the Good of All Slate, the slate running in opposition to Mr. Cetinske's slate, is defamatory and slanderous.

Roy Dale Jones filed a protest which was acknowledged by the Election Officer as a post-election protest (Post-61-LU63-CLA) which concerns the use of the bulletin board located at that Adelanto facility of Roadway Express. Mr. Jones contends that prior to March 14, 1991, Mr. Cetinske was observed removing campaign materials from the bulletin board at said facility or covering up campaign materials for the Informed Teamsters Slate with campaign materials for the Delegates for Carey Slate.

Margaret Peterson also filed a post-election protest, a portion of which is the subject of the Election Officer determination in Case Nos. P-683-LU63-CLA and Post-61-LU63-CLA. The remainder of Ms Peterson's protest concerns allegations that Mr. Cetinske harassed her by the use of profanity and name-calling during prior Local Union steward elections. Ms Peterson also alleges that Mr. Cetinske, Terry Mangrum, and Rob Kniss, all candidates on the Delegates for Carey Slate, have removed campaign literature of the Informed Teamsters for the Good of All Slate from the bulletin board located at the Adelanto facility of Roadway Express. Ms. Peterson further complains that Delegates for Carey Slate campaign literature has been posted on a new glass-enclosed bulletin board put up by Roadway which she contends is for official Union postings only.

I. The Protest of Mr. Cetinkse Concerning Campaign Literature.

Mr Cetinske contends that campaign literature distributed by the Informed Teamsters for the Good of All Slate ("Informed Teamsters Slate") is defamatory and slanderous The literature in question is a one-page document which makes various allegations against certain candidates on the Delegates for Carey Slate ("Carey Slate") including allegations against Mr. Cetinske being a "scab" and having duties at a club which may make him unavailable for performing the duties of a delegate.

The model for free and fair Union elections is that of partisan political elections In those elections, contestants are generally allowed to make whatever assertions, allegations, statements of opinion, or even alleged facts without legal sanctions for their truth or falseness The cardinal principle is that the best remedy for untrue speech is more free speech, with the electorate being the final arbiter As long as the literature in question did not purport to be the official voice of the organization, as opposed to being the opinions of candidates who may be officers, inquiry will not generally be made as to its truth or falseness A review of the campaign literature in question clearly establishes that the literature does not purport to be the official voice of the Local Union and is identified as literature for the Informed Teamsters Slate.

Thus, the fact that campaign statements are allegedly false, irrelevant or even defamatory does not remove them from the protection of the *Rules*. National Association of Letter Carriers v. Austin, 418 U S. 264 (1974) (uninhibited and robust debate encouraged in labor matters, even allegedly defamatory statements permitted),

Salzhandler v. Caputo, 316 F 2d 445 (2nd Cir. 1963) (statements critical of Union officials, even if incorrect, protected). The policy of encouraging robust debate in the selection of delegates for the IBT is reflected in the *Rules*' prohibition of censorship of campaign literature. *Rules*, Article VII, § 6 (g). Thus, the campaign literature distributed by the Informed Teamsters Slate does not violate the *Rules*.

II. The Protest of Margaret Peterson Concerning Harassment by Mr. Cetinske.

Ms. Peterson alleges that Mr. Cetinske during a prior contest between Mr. Cetinske and herself for Union steward, had been verbally abusive to her including using profane language to describe his opinion of her. Ms. Peterson further alleges that as late as November of 1990, Mr. Cetinske had been verbally abusive of her and has a personal vendetta against her.

Ms Peterson does not allege that any of the above statements or comments by Mr. Cetinske have been directed toward her in connection with any activities she may have undertaken in support of any candidate for delegate or alternate delegate to the International Convention or any candidate for International office. Ms. Peterson was not herself a delegate or alternate delegate candidate in the delegate election

The jurisdiction of the Election Officer is limited to the nomination and election process for International Union delegates and International officers. Neither the Consent Order nor the *Rules* grant the Election Officer the authority to determine charges or protests that do not concern the International delegate and International officer nomination and election process. Specifically, the Election Officer has no jurisdiction over exclusively Local Union elections such as stewards' elections.

The allegedly inappropriate conduct of Mr. Cetinske or other members of the slate arose out of or in connection with prior Local Union elections, shop elections or interpersonal relationships. The conduct was not related to the International Union delegate nomination or election process or Ms Peterson's involvement in that process. Accordingly, her protest is not appropriately brought before the Election Officer, and cannot and will not be determined by the Election Officer.

III. Use of the Bulletin Board in the Drivers Room of the Roadway Express Terminal Located in Adelanto

The bulletin board located in the drivers room the Adelanto terminal of Roadway Express has been the subject of two prior protests In Election Office Case No P-55-LU63-CLA, the Election Officer directed that one-half of the Union bulletin board located at this Roadway facility be dedicated for use for campaign purposes The Independent Administrator affirmed the determination of the Election Officer in a decision dated December 21, 1990, 90-Elec App -21.

A second pre-election protest was filed by Mr. Cetinske, Election Office Case No P-288-LU63-CLA, alleging that campaign materials posted by him were being removed

from the bulletin board at the Adelanto terminal by certain shop stewards. As a result of the investigation conducted by the Election Officer in P-288-LU63-CLA, all parties agreed that the campaign half of the Union bulletin board as designated by the Election Officer in P-055-LU63-CLA would be divided into quadrants with each slate having the right to post campaign materials on one quadrant. The Local agreed that the Carey Slate campaign would have access to the lower right quadrant of the bulletin board. This agreement was memorialized by the Election Officer in a decision dated February 7, 1991.

On or about March 14, 1991, management of Roadway Express replaced the above-referenced bulletin board with a locked glass covered bulletin board (the "new board"). On March 14, 1991, a Roadway Express manager, Sam Barrissi, unlocked the new bulletin board and allowed Mr. Cetinske to post four pieces of campaign literature for the Carey Slate on it. Mr Barrissi also advised Mr. Cetinske that he would have 24-hour access to the new board On March 15, 1991, John DeWorken, a business agent for Local 63, took down all of the campaign literature from the new board, including the Carey Slate material placed on the board by Mr. Cetinske as well as campaign literature posted concerning the Informed Teamsters Slate The new locked board therefore had no campaign literature placed upon it after that date

The investigation conducted by the Election Officer reveals that there is no dispute as to the above facts. There is a dispute, however, as to the purpose of the new glass enclosed board and the availability of the old board for the posting of campaign materials

Mr DeWorken contends that the old bulletin board was placed beneath the new bulletin board and that campaign literature was to be posted on the old board with the new locked board being for official Union postings only. Mr. Cetinske contends that the old bulletin board was not placed under the new bulletin board until March 22, 1991, some 7 days after the new board was put into place. For the period March 15 to March 22, Mr. Cetinske states that the only available bulletin board for campaign postings was the glass enclosed bulletin board.

Ms Peterson, a trustee of Local 63 employed by Roadway at Adelanto, states that on or about March 15, 1991 she was advised by John DeWorken that the company had installed a new glass enclosed bulletin board to be used for official Union posting The old bulletin board was to remain in the drivers room to be used for general purpose postings including campaign postings Ms Peterson stated that the old board with campaign literature posted on it remained was in the drivers room for a few days after the new board was installed but then the old board disappeared Prior to the date on which the old board disappeared, she was asked by management of the company whether she had any notices posted on the old board She did and she then removed all official Union notices from the old board and reposted them on the new board She left all campaign postings on the old board. A few days later, after the filing of P-690-LU63-CLA by Mr. Cetinske, Ms Peterson states the old board was again placed under the new board with the campaign literature attached As of April 5, 1991 the old board

from the bulletin board at the Adelanto terminal by certain shop stewards. As a result of the investigation conducted by the Election Officer in P-288-LU63-CLA, all parties agreed that the campaign half of the Union bulletin board as designated by the Election Officer in P-055-LU63-CLA would be divided into quadrants with each slate having the right to post campaign materials on one quadrant. The Local agreed that the Carey Slate campaign would have access to the lower right quadrant of the bulletin board. This agreement was memorialized by the Election Officer in a decision dated February 7, 1991.

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was again removed, the only bulletin board in the drivers room is the new locked glass enclosed bulletin board. Ms Peterson admits that she removed campaign materials which had been pushed through the glass enclosed board.

As a result of Case No. P-055-LU63-CLA, a notice was posted by the Local which provides in pertinent part as follows:

> You have the right to post campaign materials on the Union bulletin board at the Roadway Express site in Adelanto, California unless and until a new bulletin board is provided for campaign postings. When such new bulletin board is provided, you will have the right to post campaign materials on that board.
>
> Local Union 63 will not interfere with the exercise of any of these rights or any other rights of IBT members set forth in the *Rules for the IBT International Union Delegate and Officer Election.*

Mr Cetinske contends that Mr DeWorken violated the decision in P-055-LU63-CLA by his action in removing all campaign materials from the glass-enclosed bulletin board and requests that the Election Officer institute contempt proceedings against Mr. DeWorken Mr DeWorken contends that the glass-enclosed bulletin board was an additional board for official Union notices only and the old bulletin board remained for the posting of campaign materials.

Mr Jones and Ms. Peterson contend that Mr. Cetinske has violated the decisions in P-055-LU63-CLA and P-288-LU63-CLA, dividing the board in quadrants, when, prior to the installation of the glass-enclosed bulletin board, he removed or posted over campaign literature of the Informed Teamsters Slate.

Based on the facts set forth above, the Election Officer finds that Mr. DeWorken violated the decision of the Election Officer by removing literature from the glass-enclosed bulletin board The old board, even if the intention was to utilize it for campaign postings, was not even affixed to the wall when it was present in the drivers room However, since there was some confusion whether the new board was intended to replace the old board or was to be used in addition to the old board, which would then be the general purpose bulletin board to be used for campaign postings as contemplated by the notice in P-055-LU63-CLA, the Election Officer declines to request that contempt charges be initiated against Mr DeWorken

The Election Officer also declines to determine whether Mr Cetinske violated the decisions of the Election Officer The decisions, and the notice, are not directed at Mr. Cetinske but at Local Union officers and agents A protest regarding his alleged actions, although clearly within the purview of the *Rules*, is moot since all allegations predate the installation of the new glass-enclosed bulletin board.

Due, however, to the obvious continuing problems the respective parties in this

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Mr Cetinske contends that Mr DeWorken violated the decision in P-055-LU63-CLA by his action in removing all campaign materials from the glass-enclosed bulletin board and requests that the Election Officer institute contempt proceedings against Mr DeWorken Mr DeWorken contends that the glass-enclosed bulletin board was an additional board for official Union notices only and the old bulletin board remained for the posting of campaign materials.

Mr. Jones and Ms. Peterson contend that Mr. Cetinske has violated the decisions in P-055-LU63-CLA and P-288-LU63-CLA, dividing the board in quadrants, when, prior to the installation of the glass-enclosed bulletin board, he removed or posted over campaign literature of the Informed Teamsters Slate

Based on the facts set forth above, the Election Officer finds that Mr. DeWorken violated the decision of the Election Officer by removing literature from the glass-enclosed bulletin board The old board, even if the intention was to utilize it for campaign postings, was not even affixed to the wall when it was present in the drivers room However, since there was some confusion whether the new board was intended to replace the old board or was to be used in addition to the old board, which would then be the general purpose bulletin board to be used for campaign postings as contemplated by the notice in P-055-LU63-CLA, the Election Officer declines to request that contempt charges be initiated against Mr DeWorken

The Election Officer also declines to determine whether Mr Cetinske violated the decisions of the Election Officer The decisions, and the notice, are not directed at Mr Cetinske but at Local Union officers and agents A protest regarding his alleged actions, although clearly within the purview of the *Rules*, is moot since all allegations predate the installation of the new glass-enclosed bulletin board

Due, however, to the obvious continuing problems the respective parties in this

Local are encountering in connection with posting campaign materials on the bulletin board located in the drivers room of the Roadway Adelanto facility, the Election Officer orders the following:

(1) One-half of the glass-enclosed bulletin board located in the Drivers Room of the Roadway Express Adelanto facility is determined to be a general purpose bulletin board which may be used for the posting of campaign materials. The installation of any additional bulletin boards in the drivers room shall not alter the use of the glass-enclosed bulletin board.

(2) In accordance with the prior agreement of the parties, this one-half of the bulletin board is divided into two quadrants, the upper quadrant to be used for members to post campaign materials for the Informed Teamsters Slate and the lower quadrant to be used for those members to post campaign materials for the Carey Slate.

(3) All Local Union 63 members who have a key(s) to the bulletin board will relinquish the keys to Robert Marciel, the Secretary-Treasurer of the Local Union Mr Marciel will designate two shop stewards at the Roadway Express terminal who will possess the key to the bulletin board. In addition, management will also possess a key(s) to the bulletin board. No other member, steward or Local Union agent shall be given the key to the bulletin board. Any postings on the bulletin board, other than campaign material, shall be made by the shop stewards who have possession of the key. These shop stewards shall not touch, remove, relocate or cover any campaign material posted for either slate unless specifically authorized by a representative of the slate to do so.

(4) The bulletin board shall remain locked at all times except for the purpose of posting material. The board shall be opened at the request of any member who wishes to post campaign materials Members may request management or the designated shop steward to open the board for this purpose. No member who is posting campaign materials for one slate will touch, remove, relocate or cover any materials on the quadrant of the bulletin board designated for the other slate.

Within seven days of the receipt of this determination letter, Local Union 63 by its principal officer, Robert Marciel, will certify to the Election Officer that the directives above have been complied with and will also notify the Election Officer of the names of the shop stewards who have possession of the keys to the bulletin board

Accordingly, the protests, to the extent compliance with prior decisions of the Election Officer is requested, is GRANTED In all other respects, the protests are DENIED.

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/mca

cc Frederick B Lacey, Independent Administrator
Geraldine L Leshin, Regional Coordinator

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

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July 11, 1991

VIA UPS OVERNIGHT

Mr John Celinske
15764 Arbolada Lane
Victorville, CA 92392

Mr John DeWorken
Business Agent
IBT Local Union 63
1616 West Ninth Street
Room 205
Los Angeles, CA 90015

Mr Roy Dale Jones
14327 Jicarilla Road
Apple Valley, CA 92307

Mr Robert Marciel
Secretary-Treasurer
IBT Local Union 63
1616 West Ninth Street
Room 205
Los Angeles, CA 90015

Ms Margaret Peterson
14327 Jicarilla Road
Apple Valley, CA 92307

Re: Election Office Case Nos. **P-055-LU63-CLA**
P-288-LU63-CLA
P-690-LU63-CLA
Post-61-LU63-CLA
(Compliance)

Gentlemen and Ms Peterson

A compliance protest has been filed pursuant to Article XI of the ***Rules for the IBT International Union Delegate and Officer Election***, revised August 1, 1990 ("***Rules***") In his protest, John Celinske alleges that campaign postings for both the Delegates for Carey Slate ("Carey Slate") and the Informed Teamsters for the Good of All Slate ("Informed Teamsters") have been removed from the locked bulletin board at Roadway Express in Adelanto, California contrary to the direction of the Election Officer in the above referenced cases

The protest was investigated by the Washington, D C staff of the Election Officer The investigation discloses the following facts There have

been a number of protests filed with the Election Officer concerning the bulletin board at the Adelanto facility of Roadway Express In his last decision regarding this bulletin board, issued on April 19, 1991, the Election Officer gave further direction regarding this bulletin board, and the campaign access rights of IBT members employed at Roadway with respect to it, as follows:

(1) One-half of the glass-enclosed bulletin board located in the Drivers Room of the Roadway Express Adelanto facility is determined to be a general purpose bulletin board which may be used for the posting of campaign materials. The installation of any additional bulletin boards in the drivers room shall not alter the use of the glass-enclosed bulletin board

(2) In accordance with the prior agreement of the parties, this one-half of the bulletin board is divided into two quadrants, the upper quadrant to be used for members to post campaign materials for the Informed Teamsters Slate and the lower quadrant to be used for those members to post campaign materials for the Carey Slate.

(3) All Local Union 63 members who have a key(s) to the bulletin board will relinquish the keys to Robert Marciel, the Secretary-Treasurer of the Local Union Mr Marciel will designate two shop stewards at the Roadway Express terminal who will possess the key to the bulletin board In addition, management will also possess a key(s) to the bulletin board No other member, steward or Local Union agent shall be given the key to the bulletin board Any postings on the bulletin board, other than campaign material, shall be made by the shop stewards who have possession of the key These shop stewards shall not touch, remove, relocate or cover any campaign material posted for either slate unless specifically authorized by a representative of the slate to do so

(4) The bulletin board shall remain locked at all times except for the purpose of posting material The board shall be opened at the request of any member who wishes to post campaign materials Members may request management or the designated shop steward to open the board for this purpose No member who is posting campaign materials for one slate will touch, remove, relocate or cover any materials on the quadrant of the bulletin board designated for the other slate

Subsequent to this decision, Robert Marciel, Secretary-Treasurer of Local Union 63, designated Margaret Peterson, trustee of Local Union 63 and Union steward Rick Harris as the parties designated by the Local Union to be given and to be responsible for the key to the bulletin board. Sam Barressi is the management representative who retains a key to the board.

A rerun election for delegates and alternate delegates to the 1991 IBT International Convention was conducted in Local Union 63. The ballot count was completed on May 31, 1991

During the evening hours of June 1, 1991, or the morning of June 2, 1991, the campaign literature of both slates was removed from the bulletin board Subsequently Cetinske found the campaign literature in the trash can in the drivers room Several items were posted on the bulletin board in the quadrants that had been directed by the Election Officer to be used solely for posting of campaign materials by the two slates These newly-posted items included a call for a Local Union meeting, a handwritten announcement that the Informed Teamsters Slate had won the rerun election, a letter concerning a discussion Local Union officers had with the International about pension issues, and a notice signed by Business Agent John DeWorken calling for the formation of a work rules committee to discuss the bid procedure

Business Agent John DeWorken, Local Union steward Rick Harris, Trustee Margaret Peterson, Secretary-Treasurer Robert Marciel, and Relay Manager Sam Barressi were interviewed telephonically concerning this matter Both Peterson and Harris deny that they entered the board to remove campaign materials or that they that they provided the key to the lock to any other IBT member for the purpose of removing the campaign materials Peterson states further that she discovered on June 1, 1991, that the existing lock to the bulletin board has been glued with super glue, and that her key could not open the lock Peterson states that she is the author of the handwritten note that announces the outcome of the rerun election, which is currently posted in the location designated for campaign posting, but contends that she posted the note on the upper right hand corner on the outside glass of the bulletin board on the morning of June 1, 1991, because the lock was jammed, and her key could not open the lock

Relay Manager Barressi confirms that the postings have been changed, and that the lock to the bulletin board is in fact jammed Barressi states additionally that no IBT member utilized the key in his possession for the purpose of changing the postings

5 Margaret Peterson and Rick Harris shall in the future be strictly liable for the proper posting of campaign literature In the event campaign materials properly posted are covered, removed, defaced or otherwise obscured or damaged, Margaret Peterson and Rick Harris will be required, at their own expense, to duplicate the campaign material and mail it via first class mail to each IBT member employed by Roadway Express at its Adelanto, California facility.

6 Rick Harris and Margaret Peterson shall each pay the sum of $100 00 (one hundred dollars) to the Election Officer This sum represents the partial costs of this compliance investigation The monies shall be tendered to the Election Officer within ten days of the date of this letter

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, IBT
Geraldine L Leshin, Election Office Regional Coordinator

OFFICE OF THE ELECTION OFFICER
c/o INTERNATIONAL BROTHERHOOD OF TEAMSTERS
25 Louisiana Avenue, NW
Washington, DC 20001

Michael H Holland
Election Officer

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July 29, 1991

VIA UPS OVERNIGHT

Rick Harris
c/o IBT Local 63
1616 W Ninth St.
Room 205
Los Angeles, CA 90015

Re: Election Office Case Nos. P-055-LU63-CLA
P-288-LU63-CLA
P-690-LU63-CLA
Post61-LU63-CLA
(Compliance)

Dear Mr Harris

Enclosed please find a copy of the determination of the Election Officer rendered on July 11, 1991, in connection with a compliance protest filed by John Cetinske concerning the above referenced Election Office cases. The determination requires you to take certain remedial action and further requires you to pay the sum $100 00 to the Election Officer as partial reimbursement for the costs incurred in the compliance investigation That amount shall be tendered by you to the Election Officer within 10 days of the date of this letter

If you are dissatisfied with this determination, you may request a hearing before the Independent Administrator within twenty-four (24) hours of your receipt of this letter Any request 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. A copy of the request for hearing must be served on the parties listed below as well as upon the Election Officer, IBT, 25 Louisiana Avenue, N W , Washington, D C 20001, Facsimile (202) 624-8792

Very truly yours,

Michael H Holland

MHH/mjv

cc Frederick B Lacey, Independent Administrator

Geraldine L. Leshin, Regional Coordinator

John Cetinske
15764 Arbolada Lane
Victorville, CA 92392

Robert Marciel
Secretary-Treasurer
IBT Local Union 63
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Room 205
Los Angeles, CA 90015

Everett J Roberts, Trustee, IBT Local Union 63

John DeWorken, Business Agent, IBT Local Union 63

Margaret Peterson
14327 Jicarilla Rd
Apple Valley, CA 92307

Roy Dale Jones
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Rick Harris
c/o Roadway Express Terminal
17401 Adelanto Road
Adelanto, CA 92301

IN RE: JOHN CETINSKE and IBT LOCAL UNION NO. 63 and MARGARET PETERSON and RICK HARRIS	91 - Elec. App. - 176 (SA) DECISION OF THE INDEPENDENT ADMINISTRATOR

This matter arises out of an appeal from a decision of the Election Officer in Case No. P-055-LU63-CLA, et al. A hearing was held before me at which the following persons were heard via telephone conference: Margaret Peterson and Rick Harris; John J. Sullivan, an attorney with the Election Office; the Regional Coordinator, Geraldine Leshin; the Adjunct Regional Coordinators, Mary Joyce Carlson and Gerry Fellman; and Everett "Jim" Roberts, Local 63's Temporary Trustee.

This matter involves a locked, glass-enclosed bulletin board maintained by Roadway Express at its Adelanto, California facility. In an effort to resolve repeated disputes regarding access to the bulletin board, in a decision dated April 19, 1991, the Election Officer reaffirmed an earlier decision that one-half of the bulletin board should be devoted to the posting of campaign

material, and that one-quadrant of that one-half should be reserved for the use of the Informed Teamsters For The Good Of All Slate and that the remaining quadrant should be reserved for the opposing slate -- the Delegates For Carey Slate.[1] To control access to the bulletin board, the Election Officer also directed Roadway to designate one supervisory or managerial employee to have custody of the key to the board. This was done. The Election Officer also directed Local 63 to designate two members employed at the Roadway facility who would also have keys to the bulletin board and who would be available, when necessary, to post or remove materials as appropriate. This was also done and Ms. Peterson and Mr. Harris were the Local's appointees. The Election Officer also found that the Local should be held responsible for policing the use of the bulletin board and insuring compliance with the Election Rules.

At the time of the Election Officer's April 19, 1991, decision, Robert Marciel was the Secretary-Treasurer of the Local and it was he who appointed Ms. Peterson and Mr. Harris. Local 63 is currently under Trusteeship and Mr. Marciel has been relieved of his duties. As noted, Mr. Roberts is the IBT's appointed Temporary Trustee.

Despite these remedial measures, in early June 1991, immediately following the completion of Local 63's delegate re-run election, campaign material of both slates was removed from the

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1 While the delegate campaign is over, the use of the bulletin board will no doubt continue to be an issue throughout the campaign period for International Officers.

board and later found in the trash. In addition, the lock on the bulletin board was tampered with so that the keys would not open the board.

The identity of the individual(s) who tampered with the board has not been ascertained. All three monitors of the board denied giving the key to unauthorized individuals.

Relying on his April 19, 1991, decision that the Local should be held responsible for policing the use of the bulletin board and insuring compliance with the Election Rules, the Election Officer, in his recent decision, found that the designated agents of the Local -- Ms. Peterson and Mr. Harris -- should be liable for the misuse of the board that occurred in early June. Accordingly, the Election Officer directed that Ms. Peterson and Mr. Harris reimburse the Election Officer for the partial cost of his investigation on this protest in the amount of $100 each. The Election Officer also ordered Local 63 to replace the existing lock on the board and to furnish the three designated individuals with the only keys to the new lock. The previous order reserving quadrants of the bulletin board for campaign postings was also continued. Further, Local 63 was directed to retain responsibility for supervising and policing the use of the bulletin board.

In their appeal, Ms. Peterson and Mr. Harris advised that they no longer wished to continue as monitors of the bulletin board. Given this, the Election Officer indicated that he would accept

substitute appointments from the Local to be made by the Trustee, Mr. Roberts.

At the hearing both Ms. Peterson and Mr. Harris testified that they were never apprised by Mr. Marciel that they would be held personally liable for any misuse of the bulletin board. They understood their responsibility to be limited to allowing access to the board when members wanted to post material.

Given that neither Ms. Peterson or Mr. Harris received prior notice of potential personal liability for misuse of the board, it would be inequitable to impose upon them the monetary penalty that the Election Officer suggests. See In Re: Bohan, 91 - Elec. App. - 65 (SA) (February 12, 1991). In In Re: Bohan, the Secretary-Treasurer of a Local had the responsibility of posting certain election notices, and subsequently designated another person to discharge that responsibility. It was held that since the Secretary-Treasurer failed to fully orientate the designee as to the full scope of his responsibility, the designee should not be held responsible for a substantial defacing of the notice.

In In Re: Bohan, it was further found that while the Secretary-Treasurer could designate an individual to actually post the notice, that act of designation would not relieve the Secretary-Treasurer of his ultimate responsibility of policing the posting to insure that it was properly posted in the first instance and was not subsequently vandalized or otherwise obstructed or removed. To rule otherwise would allow those with principal

responsibility for taking certain action to insure compliance with the Election Rules, to absolve themselves of liability by simply delegating their authority. The lesson to be learned from In Re: Bohan is that if one charged with a duty by the Election Officer wishes to choose a designee to carry out that duty, he must choose the designee carefully, educate the designee fully as to the scope of his/her responsibility, and continue to police the designee to insure that the duty is properly being carried out.

This appears to be another replay of the In Re: Bohan situation. Mr. Marciel, the Secretary-Treasurer of Local 63 at the time, was the representative of the Local who was charged with responsibility for caring for the bulletin board and designating the two representatives of the Local to monitor the use of the board. Since Mr. Marciel failed to fully apprise his designees of their responsibility, and the potential for personal liability, they should not now be saddled with monetary penalties arising out of the board's misuse.

Accordingly, the decision of the Election Officer assessing $100 penalty against both Mr. Peterson and Mr. Harris is reversed. Moreover, I am remanding this matter for the Election Officer to consult with Local 63's Trustee, Mr. Roberts, in an attempt to devise a mechanism by which the use of this bulletin board may be fully protected. Mr. Roberts indicated at the hearing that he would cooperate fully with the Election Officer in this regard. I ask the Election Officer to consult with Mr. Roberts within a

reasonable time and to report back to me in writing with his (the Election Officer's) recommendations. As I noted at the hearing, it may very well be, that after consulting with Mr. Roberts, the Election Officer's recommendations are no different than those offered in his recent decision, i.e., that a new lock be installed and that keys be again distributed to monitors. I only ask that the Election Officer explore other alternatives with Mr. Roberts. Perhaps the presence of Mr. Roberts (as opposed to Mr. Marciel) will bring some order to this situation.

Once I receive the Election Officer's recommendations, I will schedule another hearing to discuss them. At that time, I will also provide Mr. Marciel with notice of the hearing to hear his position on whether the penalties assessed by the Election Officer against Ms. Peterson and Mr. Harris should be borne personally by him. In addition, Mr. Marciel will be provided a copy of this decision.

Frederick B. Lacey
Independent Administrator
By: Stuart Alderoty, Designee

Dated: August 9, 1991