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February 6, 1991

**VIA UPS OVERNIGHT**

Robert Bernstein  
c/o Local Union 781  
320 South Ashland Ave  
Chicago, IL 60607

Anthony Gabriele  
8245 N. Oconto  
Niles, IL 60648

Joseph Bernstein  
President  
IBT Local Union 781  
320 South Ashland Ave.  
Chicago, IL 60607

**Re: Election Office Case No. P-329-LU781-CHI**

Gentlemen

On January 18, 1991, Mr Robert Bernstein protested the eligibility of Anthony Gabriele to be a candidate for delegate, stating five allegedly supporting grounds:

- (1) He nominated himself in writing,
- (2) he failed to attend the nomination meeting,
- (3) his seconders did not name him in their written seconds,
- (4) his seconders did not attend the nomination meeting, and
- (5) he failed to accept the nomination

The Election Officer's investigation disclosed the following facts.

Prior to the meeting for nominations for delegate and alternate delegate to the 1991 IBT International Convention from Local Union #781, Anthony L. Gabriele filed with the Local Union a written document consisting of a single sheet of paper. In the document, Gabriele provided his social security number and nominated himself as a candidate for delegate to the Convention and signed his name. Below Gabriele's signature, four other members of the Local Union, Sang Le, Jaime Barrios, Adrian Maldonado and Edward Lindholm, each separately signified that they "second his nomination as a delegate for the 1991 IBT Convention." Each seconder provided his social security number and signed below his second. Each signator wrote that he was unable to attend the January meeting due to work.

The five signers work at Barr Company, 6100 West Howard Street, Niles, Illinois. The nominating meeting was held on Thursday, January 17, 1991, at 6:00 P.M. at Teamster City, 300 S Ashland Avenue, in Chicago. The distance between the company and the union hall is approximately fifteen miles. There is no public transportation between the two sites. Traversing the distance by car can take up to an hour depending upon traffic.

The seconders each frequently worked overtime, customarily prior to their 6 30 A M to 3 00 P M regular shift. The precise overtime hours are not known until a few days in advance. On the day of the nominating meeting, they worked the following clock-in hours:

Le--4:20 A M to 4 00 P M.  
Barrios--4 19 A M. to 3 00 P M  
Maldonado--6 21 A M to 3.01 P M  
Lindholm--4.55 A.M. to 3 01 P.M.

On Friday, the following day, the seconders worked the following clock-in hours:

Le--5 20 A M to 4 00 P M.  
Barrios--4 26 A M. to 3 00 P M.  
Maldonado--6 16 A M to 3 00 P M  
Lindholm--4 51 A M to 3 07 P M

Article II, Section 3(e), (f) and (h) of the Rules for the IBT International Union Delegate and Officer Election contain provisions pertinent hereto dealing with the nomination of delegates to the Convention. As specified therein, a nomination must be made at a membership meeting by a member in good standing other than the nominee and seconded by a member in good standing other than the nominee. The nomination and/or second may be done in writing prior to the meeting if such member is unable to attend the meeting in person due to any of several reasons including his work schedule. Such writing

" shall state whether it is a nomination or a second, the name of the member being nominated or seconded and whether the nomination or second is for delegate or alternate. It shall be signed by the member submitting the nomination or second with his/her Social Security number and the reason(s) the member is unable to attend the meeting."

The member nominated "must accept his/her nomination at the time made either in person, or, if absent, in writing"

The first basis for the protest was that Gabriele nominated himself in writing. The rules clearly provide that a member cannot nominate himself. Therefore, Gabriele's nomination of himself was a nullity

However, the rules require only a single second, and Mr Gabriele was seconded by four Local 781 members. The qualifications for a member making a second are identical to the qualifications for a member making a nomination.

Further, the purpose of Article II, §3(h) of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") is to assure that a member's candidacy for delegate or alternate delegate is supported by at least two members in good standing other than the candidate. A second to a nomination is, therefore, no different than a nomination designated as such.

Both a nomination and a second demonstrate that a member, other than the candidate, supports the candidacy. Thus, whether there be one nomination and one second, or two nominations and no seconds, or two seconds and no nominations, or as is in this case, no nominations and four seconds, the purpose of the *Rules* is fulfilled: At least two members other than the candidate support the candidacy. Additionally, since the nomination and all four seconds were contained on a single document, it would elevate form over substance not to construe one or more of the seconds as a valid nomination.

The second basis for the protest was that Gabriele did not attend the meeting. Nothing in the *Rules* requires a candidate to attend the nominations meeting.

The third basis for the protest was that the seconders did not name him in their written seconds. Once again, substance must control over form. For the document identifies Gabriele by name as the person being nominated and seconded.

The fourth basis for the protest was that the seconders did not attend the nomination meeting without cause recognizable under the *Rules*. A similar issue arose in the case of Adrian Huff, 90-Elec App -16(SA). In a decision dated November 29,

1990, the Independent Administrator reversed my decision in which I had found that Mr. Huff had not been properly nominated. The Independent Administrator held that: "a 'members work schedule' may result in his sleeping on a Friday evening, even if he did not have to work the following day " The nominator at issue in that case had worked from approximately 3 30 a m until 5 00 p m., a total of 13-1/2 hours, and had submitted a written nomination in lieu of attending the 8 00 P M. nomination meeting.

In the instant case, the correlative factors are as follows: The site of the nomination meeting was a significant distance from where the seconds worked, thereby entailing extensive travel time both ways in addition to the time taken by the meeting.

Le worked 11 hours, 40 minutes, had a break of 13 hours, 20 minutes (including the approximately 3 hours of travel time and meeting time had he attended the meeting); and then worked 11 hours, 40 minutes.

Barrios worked almost 11 hours, had a break of 13 hours, 26 minutes (including the approximately 3 hours of travel time and meeting time had he attended the meeting); and then worked 10 hours, 34 minutes

Lindholm worked over 10 hours, had a break of 13 hours, 51 minutes (including the approximately 3 hours of travel time and meeting time had he attended the meeting); and then worked 8 hours, 16 minutes

Maldonado worked 8 hours, 40 minutes, had a break of 15 hours, 17 minutes (including the approximately 3 hours of travel time and meeting time had he attended the meeting), and then worked 8 hours, 44 minutes

A comparison of this case and the Huff case shows that the lag time between the end of the first day's work and the meeting time was greater in the Huff case than here but that the nominator in the Huff case could have more easily delayed going to sleep than here because he was not scheduled to work the following morning. In sum, this case is well within the principle and spirit of the decision in Huff. Therefore, the written nominations and seconds of Gabriele were in conformity with the *Rules*.

The fourth basis of the objection was that Gabriele failed to accept his nomination I find that his act of nominating himself was tantamount to an acceptance of his nomination Under the *Rules*, any candidate, may accept nomination in writing, regardless of his reasons for not attending the nominations meeting, *Rules*, Article II §3(h)

**Robert Bernstein**  
**Page 5**

**Conclusion**

For the foregoing reasons, Mr Gabriele meets the eligibility requirements to run for delegate to the IBT International Convention. 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/acm/sst

cc **Frederick B Lacey, Independent Administrator**  
**Julie Hamos, Regional Coordinator**

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IN RE:  
 ANTHONY GABRIELE  
 COMPLAINANT,  
 and  
 ROBERT BERNSTEIN  
 RESPONDENT.

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91 - Elec. App. - 67

DECISION OF THE  
INDEPENDENT ADMINISTRATOR

This protest, arising under Article II, Section 3 of the Rules for the IBT International Union Delegate and Officer Election, revised August 1, 1990 ("Rules"), challenges the eligibility of a candidate for delegate to the IBT 1991 Convention on the basis of several departures from the letter of the Rules. A hearing was held before me by way of teleconference at 11 a.m. (EST) on February 12, 1991. The following persons were heard: John Sullivan, on behalf of the Election Officer; Julie Hamos, the Regional Coordinator, by Bob Walsh, and her Adjunct, Debrah Schaaf; Robert Bernstein of Local Union 781; and attorney Sherman Carmell for the Local Union.

The issues are broadly stated in the Election Officer's Summary, as follows (p. 1):

Robert Bernstein protests that Anthony Gabriele is ineligible to run for delegate to the convention because Mr. Gabriele nominated himself in writing, failed to attend the nominations meeting in person, and failed to accept the nomination. Mr. Bernstein also protests that Mr. Gabriele's seconds did not specifically name him in their written seconds and did not attend the nominations meeting.

The position of Local Union 781 member Anthony Gabriele is that his nomination and seconds substantially comply with the substance of the Rules by adequately demonstrating that he has the support of two other members for his nomination.

The pertinent nominations meeting was held on January 17, 1991, at 6 p.m. at the Union building. Prior to the meeting, Mr. Gabriele had filed with the Union a document nominating himself for a position as delegate to the 1991 IBT Convention. On the same document, four members of the Local signed a statement in which they said that they "second[ed] his nomination as a delegate to the 1991 IBT Convention." Each of the persons said "I am unable to attend the meeting in January due to work."

It is clear that Mr. Gabriele cannot nominate himself in writing. I must reject the suggestion from the Adjunct to the Regional Coordinator that a form of notice originated by the Election Officer could somehow be understood by Mr. Gabriele as permitting a self-nomination.

It is required that any nomination must be seconded by a member. Obviously, here there were four members who purported to second the nomination, all of whom were members in good standing and were eligible to nominate or second the nomination of a candidate.

The Election Officer stated (paras. 10-11, pp. 3-4):

10. In accord with previous decisions issued by him, the Election Officer determined that one of Mr. Gabriele's seconds may be deemed a nomination. Pursuant to the Rules, the qualifications for making a nomination are no different than the qualifications for making a second. See Article II, Section 3(f) of the Rules. In addition, the purpose of requiring a nominator plus a seconder is to demonstrate that



the member's candidacy is supported by at least two members other than the candidate. The support of two seconds is the same as the support of a nominator and a seconder, and it satisfies the purpose of the requirement of Article II, Section 3(f) of the Rules.

11. Accordingly, because there is no substantive difference between a nomination and a second, and because Mr. Gabriele was supported by more than the necessary number of seconds, the purpose of the Rules is not compromised by designating one of the seconds as a nominator. Any three of the four seconds Mr. Gabriele received effectively served that function.


Counsel for the Local Union objected strenuously to the Election Officer's interpretation of the Rules, arguing that this was not an "interpretation" but rather a "destruction" of the Rules.

The Rules provide that there must be a written acceptance of the nomination by the nominee. The Election Officer stated that Mr. Gabriele "effectively indicated his acceptance by nominating himself" and that "Mr. Gabriele's written self-nomination" was "a written acceptance of his nomination."

I have decided that the Election Officer's decision must be reversed. While a single technical deviation from the Rules may, under certain circumstances, not warrant a determination of ineligibility - or warrant a generous interpretation designed to enlarge the eligibility base - I cannot place my stamp of approval upon the sum of deviations in this case. To do so, I believe, would cause loss of respect for the Rules. Were I to validate the procedures pursued here, I would be conveying the

message that the Rules are mere suggestions and departures from them would become commonplace.

Accordingly, the decision of the Election Officer is reversed and Mr. Gabriele is declared ineligible to be a candidate for delegate to the IBT 1991 Convention.

  
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Frederick B. Lacey  
Independent Administrator

Date: February 14, 1991.