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March 11, 1991

**VIA UPS OVERNIGHT**

Patrick Handley  
4066 Norland  
Burnaby, British Columbia  
Canada V5G 3S6

John F. Edwards  
President  
IBT Local Union 31  
490 East Broadway  
Vancouver, British Columbia  
Canada V5T 1X3

Re: Election Office Case Nos. P-355-LU31-CAN  
P-423-LU31-CAN

Gentlemen:

A pre-election protest was filed pursuant to Article XI, Section 1 of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules") on January 21, 1991 by Mr Patrick Handley That case was deferred for post-election decision by Election Officer Michael H Holland on January 25, 1991. Further, on January 21, 1991, Mr Handley filed an additional protest in Election Officer Case No P-423-LU31-CAN, which was deferred by Election Officer Holland on February 1, 1991. These two cases were consolidated by the Election Officer on February 12, 1991.

In these protests, Mr Handley asserts that ballots were not mailed to the membership allowing a sufficient time for return of those ballots by the date of the count, and that this short return period prejudiced especially members in the northern and island regions of the jurisdiction of Local 31 (Local 31 includes members in the Western and Northwestern Canadian provinces, including British Columbia, Northwest Territories and the Yukon Territory The Local has approximately 6,500 members ) Mr Handley also claims that some members did not timely receive their ballots Finally he asserts that there exists an improper familial relationship between Election Officer representatives involved in counting the ballots for Local 31

Local 31's election involved the selection of eight delegates and three alternates to the 1991 IBT International Convention A total number of 1,630 ballots were received on February 7, 1991 The margin between the last delegate elected (Jim Thomson - 612) and the highest number of ballots cast for the next candidate who was

not elected (John F Edwards - 464) was 148. The margin between the last alternate selected (John Skerbinek - 580) and the alternate candidate who received the next most ballots (Pat Ironside - 414) was 166 ballots

An investigation was undertaken by the Election Officer to determine whether the ballots received after February 7, 1991 would substantiate the claim of the protester. Ballots were picked up at the Post Office on February 14, 1991 and totalled 119. Most of these post-election ballots had no stamp indicating the date on which they had been mailed. Of those that had a post-mark, most were between February 5, 1991 and February 8, 1991. Two letters indicated that they had been mailed on February 2, 1991, but they had been held up in the Post Office because they had been damaged in transit. An analysis of the regions and areas from which these ballots were received, when compared to the ballots counted on February 7, 1991, indicates that there is no difference in the geographic distribution of these ballots

Article XII, Section 3(c)(1) of the *Rules* provides that ballots shall be mailed to each member in good standing "not less than sixteen (16) days prior to the return date for voting". The ballots for the election were mailed on January 17, 1991 from Edmonton, Alberta, thus allowing twenty-one days for their return. Consequently, there is no facial violation of the *Rules* concerning the period of time between the mailing of the ballots and the return date

Moreover, with regard to the question of the practical effect of the geographic spread, the actual ballots received in the week after the count date does not support a finding that the results of the election may have been affected. Article XI, § 1(b)(2) of the *Rules*. The number of ballots received in that period, 119, is less than the margin between the lowest delegate and alternate who was elected and the next delegate and alternate who was not elected. This number was insufficient to have potentially affected the outcome of the election. Wirtz v. Local Union 125, International Hod Carrier's Building and Common Laborer's Union, 270 F. Supp 12, 62 L R R.M. 2141, 2148 (N D Ohio, 1966)

Mr Handley also alleged that a number of members of Local 31 did not receive their ballots. He called Regional Coordinator C. Neil Reimer on January 23, 1991, six days after the ballots were mailed and indicated that three or four members had not received their ballots. Mr Reimer contacted the members mentioned by Mr Handley. One such member requested that a ballot be sent and one was sent to him by special delivery. This ballot was received and counted. This involved a member who lived in Whitehorse, Yukon, so Regional Coordinator Reimer contacted other members in Whitehorse and determined that they had, in fact, received ballots. No other names of members who allegedly did not receive ballots were provided by Mr. Handley or any other member of Local 31. Accordingly, in view of the small number of individuals who allegedly did not receive ballots and the action taken by the Regional Coordinator, it is not possible to conclude that a substantial number of members of Local 31 or a number sufficient to affect the results of the election failed to receive ballots as alleged

Finally, Mr Handley alleges that three individuals who participated in the election count on behalf of the Election Office were related to Mr R T. Philp, an Election Officer Adjunct Coordinator, and such relationship was somehow improper. In fact, one individual was related to Mr. Philp, his daughter-in-law, who was an accountant and familiar with computers, skills which were useful to the Election Office, but there is no impropriety in that relationship. Mr Philp works for the Election Officer and is neutral with regard to the results of Local Union 31. Thus his relationship to one other individual who assisted in the counting of ballots is in no way improper, nor could it have affected the outcome of the election.

Taking all of the alleged violations into account, the question for determination is whether they may have affected the outcome of the election. For violation to have affected the results of the election, there must be a meaningful relationship between the violations and the results of the election. See, Wirtz v Local Union 410, 410A, 410B, & 410C, International Union of Operating Engineers, 366 F 2d 438 (2d Cir, 1991). As noted above, the alleged problems with regard to the period of time between the mailing and receipt of ballots did not affect a sufficient number of ballots, nor was their geographic distribution so different from the ballots actually received and counted in the election, to have affected the results of the election. Similarly, the evidence shows no lack of receipt of ballots by members sufficient to have affected the results of the election. The other allegations of Mr Handley were without merit.

Accordingly, Mr Handley's consolidated 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/ads

cc Frederick B Lacey, Independent Administrator



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C. Neil Reimer, Regional Coordinator