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February 26, 1991

VIA UPS OVERNIGHT

Jerry Angelich
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Dave Perry
820 Lawn Ct
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Joseph Di Prisco
Secretary-Treasurer
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Re: **REVISED DECISION in**
Election Office Case No. P-442-LU302-CSF
P-482-LU302-CSF
P-494-LU302-CSF
P-511-LU302-CSF
P-521-LU302-CSF

Gentlemen

Five pre-election protests have been filed involving IBT Local 302. All five protests are by and between David Perry, Vice President and Business Agent for Local 302 and members of Local 302's Executive Board, including Mr. Di Prisco, Local 302's Secretary-Treasurer. Each of the protests will be reviewed in separately numbered sections below.

I. P-442-LU302-CSF - Interference With Political Rights.

Mr. Perry, Vice President and Business Agent of Local 302, alleges that Mr. Joseph Di Prisco, Secretary-Treasurer of Local 302 is interfering with his right to participate in campaign and political activities in violation of Article VIII of the *Rules*. Specifically, Mr. Perry claims that Mr. Di Prisco threatened him that if he ran for delegate to the 1991 IBT Convention by saying that he (Mr. Di Prisco) would make Mr. Perry's job as Business Agent very difficult. As proof of this threat, Mr. Perry points to the fact that following Perry's declaration of his candidacy, Mr. Di Prisco has required that all information distributed by Perry on Local Union letterhead or relating to official Union business be submitted first to Mr. Di Prisco for his review. On February 1, 1991, Mr. Joseph Di Prisco sent a letter to Mr. Perry which states in

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pertinent part, "any written communications to our members on Local 302 letterhead or issued from the Union office, including the notice of meetings or announcements relating to business must be authorized by me " The letter also states that it is written pursuant to the authority of the IBT Constitution and Local Union bylaws which provide that the principal officer of the Local Union, Mr Di Prisco, is authorized to supervise and control all Union officers, including the supervisory authority over elected Business Agents

The investigation conducted by the Election Officer disclosed the following facts

Mr Perry is a Business Agent and Vice President of Local 302 In June, 1990, the Executive Board of Local 302 authorized the creation of a Local newsletter Mr Perry was assigned the responsibility of Editor and was instructed to submit the newsletter to the Executive Board prior to its dissemination The Executive Board minutes from the June 12, 1990 state as follows "Motion made by Dave Perry to have a newsletter put together by the Executive Board Guidelines to be determined by the Executive Board, and approved by the same body before distribution Motion approved " (Executive Board Local 302 Minutes, June 12, 1990) Perry submitted the first issue of the newsletter to the Executive Board, which reviewed it prior to its dissemination The Executive Board states that after reviewing the first issue, it requested that Perry make some changes prior to its publication and dissemination to the membership ¹ The Executive Board claims that Perry declined to make the changes Mr Perry answers that the Executive Board did not ask him to make any changes Perry also claims that when the newsletter was authorized, Local 302's Executive Board did not mandate that Mr Perry submit the newsletter to them prior to publication

Issue No 2 of the newsletter was issued by Mr Perry in November/December of 1990 and contains the Local 302 emblem and the designation "Teamsters Local 302 " Issue No 2 also lists the members of the Executive Board and the full-time officers of the Local Mr Perry did not submit the newsletter to the Executive Board prior to publishing and disseminating the newsletter The lead article in Issue No 2 details the fact that the Executive Board recently passed a motion to endorse Ron Carey for the Office of the President of the IBT The newsletter also contained a letter from a member endorsing Ron Carey as well as the Editor's response thanking the member for sharing information about Ron Carey, and commenting on the member's efforts in actively supporting Ron Carey's candidacy through various activities in the Local

Issue No 2 also contains an article entitled "From the Business Agent " The article is written in the first person and describes the duties performed and services provided by Mr Perry The article informs members about how to reach him twenty-four hours a day and stresses the fact that Mr Perry is interested in responding to their

¹The newsletter included an article entitle "From the Business Agent " Dave Perry is the only person listed as a Business Agent on the masthead of the newsletter and in fact is Local 302's only Business Agent None of the changes involved Perry's column

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needs as quickly as possible. The article is far longer than the "From the Business Agent" article which appeared in the first issue of the newsletter.

Mr. Di Prisco and various members of the Executive Board allege that the above references to Ron Carey's candidacy constitute improper Union contribution to an International Officer candidate. They strenuously object to the fact that they were not given an opportunity to review the newsletter or instruct Perry to remove the articles prior to its distribution. Mr. Di Prisco and various members of the Executive Board also object to the fact that the Issue No. 2 used the same masthead as Issue No. 1 which carried the title "Teamsters Local 302" with the emblazoned Teamsters logo. Di Prisco claims that Perry's use of the masthead misleads the membership because it suggests that the newsletter was issued from the Executive Board, when in fact Perry retained absolute control over its publication and dissemination. Mr. Di Prisco also claims that the article "From The Business Agent" constitutes campaigning.

After the appearance of Issue No. 2 of the newsletter, the Executive Board and Mr. Di Prisco expressed dissatisfaction to Mr. Perry over the fact that the newsletter had not been reviewed prior to its dissemination. The Executive Board then scheduled a meeting to resolve the problem. On January 8, 1991, the Executive Board met and voted either to take away Perry's exclusive control of the publication or discontinue the publication. The notes of said meeting indicated that the reasons for their actions with respect to the newsletter were based upon the issues of their final approval and their concern about outside advertising, funding and printing.

The Executive Board's decision concerning the newsletter was debated at the January 15, 1991 regular Union meeting. Prior to the January 15, 1991 meeting, Mr. Perry distributed a notice throughout the Local concerning the scheduled meeting. The notice, which was printed on Local 302 stationery, contained the statement that one of the topics to be discussed at the meeting was "[E]xecutive Board's decision to take control of the newsletter. 168 members submitted a petition not to change the format. Tell us what you think." Several members attended the meeting and voted to continue the publication, with Perry as the editor despite the Executive Board's resolution.

In February, 1991, Perry distributed a third issue of the newsletter which was entitled "The Rank & Filer - The Newsletter for Members of Local 302." Local 302's logo did not appear on the newsletter.

Mr. Di Prisco states that although he has had difficulty with Mr. Perry prior to February of 1991, the problem had intensified with Mr. Perry's conduct involving the second issues of the newsletter and membership meeting notice. Mr. Di Prisco states that he issued his February 1, 1991 directive because he was concerned about Mr. Perry's misuse of the newsletter and feared that he had used and would continue to use Union stationery and facilities for campaign purposes. Mr. Di Prisco also states that he was concerned about Mr. Perry improperly attributing campaign endorsements to Local 302's Executive Board.

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Conversely, Mr Perry asserts that Mr Di Prisco issued the letter for the sole objective of threatening him in his exercise of his political rights Perry claims that prior to the letter, he had been permitted to freely communicate with the membership through notices and letters and that the timing of the letter a few days after he announced his candidacy demonstrates that Di Prisco's actions are aimed at infringing on his political rights

Article XX, § 2 of the IBT Constitution provides that each Local "shall designate as the principal officer, the President, the Secretary-Treasurer, or the Recording Secretary " Local 302 has designated the Secretary-Treasurer to be its "principal executive officer " Article XX, § 1 of the IBT Constitution further provides that:

The principal executive officer shall, in general, supervise, conduct and control all of the business and affairs of the Local Union, its officers and employees He shall have charge and supervision of all the officers and employees of the Local Union, including elected Business Agents

The language of Article XX demonstrates that Mr Di Prisco's directive to Mr Perry is in conformity with the powers given to him as Secretary-Treasurer under the IBT Constitution, that is, the ability to supervise and be responsible for the activities of the officers and business agents of the Local

Article VIII, § 10 of the *Rules* provides that Union officers and members retain the right to participate in campaign activities However, Article VIII forbids campaigning on Union time or with the use of Union funds

I do not find that Mr Di Prisco's directive as Secretary-Treasurer is inconsistent with, or undermines Mr Perry's right to engage in campaign activities in non-Union time There is no allegation that any particular communication which Mr Perry has wished to author or distribute has been stopped by Mr Di Prisco Rather, Mr Di Prisco's directive simply requires that he be given an opportunity to review material prior to its distribution This request, in and of itself, does not, on its face appear to be unreasonable or overly burdensome, particularly in light of Mr Perry's conduct with respect to the second issue of the newsletter in circumventing the Executive Board in his publication and dissemination of the newsletter, notwithstanding the then-extant Executive Board resolution of June 12, 1990 The facts demonstrate that Mr Di Prisco has sufficient cause to be concerned about the inappropriate use of the Local's stationery and other similar items His February, 1991 directive to Mr Perry is consistent with his authority and responsibility as principal officer of Local 302

Thus, Mr Di Prisco's memorandum of February 1, 1991 requiring prior authorization of the use of Local 302 letterhead or notices of meetings or

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announcements relating to Union business is not, in and of itself, a violation of the *Rules*

Accordingly, the above described protest is DENIED

II. P-482 - Use of Union and Employer Funds for Campaigning Purposes and Misappropriation of Union Letterhead for Campaigning Purposes.

Mr Angelich, Local 302's Recording Secretary and Executive Board member, alleges that Dave Perry has improperly used Union time and resources for campaigning and has accepted monies from employers to campaign and has improperly attributed campaign literature, to wit, the newsletter, to the Local Union and its Executive Board

The *Rules for the IBT International Union Delegate and Officer Election* restrict the use of Union publications for campaigning Article VIII, § 7 of the *Rules* provides that "No Union-financed publication or communication may be used to support or attack the candidacy of any person " Article X, § 1 (b)(3) of the *Rules* provides that

No Union funds or goods shall be used to promote the candidacy of any individual Use of Union equipment, stationery, facilities and personnel in connection with any campaign is prohibited unless the Union is compensated for such use by the candidate and unless all candidates are provided equal access to such goods and services The use of the Union's official stationery with the Union's name, insignia, or other mark identifying the Union is prohibited, irrespective of compensation or access Article X, § 1 (b)(3) (p 67)

Issue No 1 of the newsletter constitutes a Union publication under the *Rules*, notwithstanding the fact that the final version of the newsletter was not edited in the exact manner requested by the Local Executive Board The first newsletter contained messages from the President, Secretary-Treasurer and Business Agent relating to ongoing activities of the Local and information of employers employing 302 members Issue No 1 contains no campaign material and therefore does not violate Article VIII, § 7 of the *Rules* which prohibits the use of Union publications for campaigning purposes The investigation conducted by the Election Officer did not establish that any employer funds were used Accordingly, I find no *Rules* violations with respect to Issue No 1 of the newsletter

Issue No 2 of the newsletter which is printed on the Local's masthead and carries Local 302's emblem contains a lead article stating that the Executive Board had passed a resolution in support of Ron Carey's campaign for International President The

issue also contained a letter to the Editor from a member of Local 302, which extolled the virtues of Mr Carey's campaign. The final paragraph of the member's letter urges Local 302 members to endorse delegate candidates who support Mr Carey's candidacy. The Editor's (Mr Perry's) response to the member's letter was a statement thanking the member for his letter and referring to the member's support of Carey's campaign through various activities in the Local.

Issue No 2 also contains the article entitled "From the Business Agent". The article discusses the services Perry provides to the members as a Business Agent and informs members that he is available to respond to their needs twenty-four hours a day. Mr Perry is a nominated delegate candidate and was at the time of the publication of Issue No 2 an active candidate, albeit not yet then nominated.

Issue No 2 bears the title and logo of Local Union 302, despite the fact that Mr Perry authored, printed and distributed Issue No 2 without the Local's authorization. Mr Perry disseminated the newsletter under the Local's logo even though he knew that he had not honored the Executive Board's motion that it review the newsletter prior to its publication. Although the investigation revealed that no Union funds, facilities, equipment or services were used to publish Issue No 2, it nonetheless presented itself as a Union publication.

Furthermore, the newsletter's references to the Executive Board's endorsements of Ron Carey, the letter from a member of Local 302 extolling Carey's candidacy, as well as the Editor's response, constitute campaigning in violation of Articles VIII and X of the *Rules*. With respect to the "From the Business Agent" article, it reminds members that Mr Perry is hard-working and is anxious to respond to their concerns. Further, the matters discussed in that article do not report on either recent events affecting the membership, nor specific Union-related activities undertaken by the Business Agent. Thus, when considered together with the campaigning noted above, Article VIII, § 7 of the *Rules* was violated.

Although the newsletter was printed without use of Union funds, it holds itself out as a Union publication. In so doing, Mr Perry violated the *Rules*. See, e.g., *Rules*, Article VIII, § 6 (a)(3) and Article X, § 1 (b)(3).

The third newsletter, however, unlike the prior two, did not contain the IBT logo. Further, the masthead reflected that it was "The Rank and Filer Newsletter for Members of Local 302". The prior issues' mastheads contained, in addition to the logo, the words "Teamsters Union" and gave the Local Union number, address and phone number.

Both by the masthead and content of this issue is significantly different from prior issues. Thus, the Election Officer concludes that Local 302 members could reasonably be expected to realize that it was not an official Union publication but rather a document produced and disseminated by, and reflecting the views of, the seven members of the

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editorial committee of the newsletter. Since no Union funds were utilized to produce the newsletter (see review of this issue, *infra*), it is therefore irrelevant whether the newsletter was used for campaigning purposes.

Thus, with respect to the newsletters, I find that only the second issue violated the *Rules* and Mr. Angelich's protest is therefore GRANTED as to that issue.

The Election Officer's investigation further revealed that none of the three newsletters were produced or published by the Local. Rather, the newsletters were created by Mr. Bob Wilcox of Stoneridge Insurance. Mr. Wilcox used desk-top publishing to produce the newsletters. Mr. Wilcox was contacted by Mr. Perry and agreed to perform this service at Mr. Perry's request. Although the first two issues of the newsletters contained advertisements, the investigation has not established that either Mr. Wilcox or the other listed advertisers are in fact employers. Therefore, Mr. Angelich claims that Mr. Perry improperly used employer funds for campaigning purposes has not been substantiated and must therefore be rejected.

III. P-494 - Interference with Mr. Perry's Political Rights.

On February 12, 1991, Mr. Perry filed a protest alleging that Local 302 has attempted to undermine his efforts to campaign as a delegate by filing intra-Union charges against him.

The investigation conducted by the Election Officer revealed the following facts:

On January 23, 1991, Mr. Perry received a copy of a letter sent to the Secretary-Treasurer of Joint Council 7 which alleged that Mr. Perry had violated Article 11, § 2 (a) of the IBT Constitution². Specifically, the letter alleges that Mr. Perry surreptitiously taped a January 8, 1991 Executive Board meeting. The letter further states that the President of the Local, who was chairing the meeting, had instructed Perry not to tape the meeting, and that although Perry had appeared to put the recorder away, in actuality he had continued to tape the meeting, and subsequently distributed a copy of the tape to the President of the Local and the Joint Council. In answer to this allegation, Mr. Perry claims that he was specifically directed by the Recording Secretary not to shut off the tape recorder.

On its face, the letter filed by the Executive Board with the Joint Council raises allegations which if proved true, constitute violations of the IBT Constitution and the Local 302 By-Laws. The investigation conducted by the Election Officer indicates that the Executive Board's motive for the filing of the charges against Mr. Perry is based on their belief that Mr. Perry violated Article 11, § 2 (a) of the Constitution. The investigation uncovered no facts which would indicate at this time that the Executive Board's motive in filing Joint Council charges was aimed at restricting his political

²Article XIV, § 6 (b)(1) of the IBT Constitution requires a member to conduct himself or herself in such a manner as not to bring reproach upon the Union.

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rights under Article VIII, § 10 of the *Rules* or in retaliation for his exercising such rights

It is clear that the above described protest involves events and issues which are presently beyond the jurisdiction of the Election Officer. The letter filed with the Joint Council directly implicates issues which can only be resolved in accordance with provisions of the IBT Constitution and Local By-Laws. Since the matter is now pending before the Joint Council, and since no evidence has been submitted to suggest improper motive, I decline to exercise jurisdiction in this matter. Accordingly, Mr. Perry's protest is DENIED.

IV. P-511-LU302-CSF - Mr. Di Prisco's Continued Harassment of Mr. Perry in the Exercise of His Political Rights.

On February 15, 1991, Dave Perry filed an additional protest which contained six claims. All of the claims asserted by Mr. Perry in his latest protest involve the allegation that Local 302, through the actions of Mr. Di Prisco, is engaged in a systematic effort to harass and interfere with Mr. Perry's exercise of political rights under § VIII of the *Rules*. Each of the claims is set forth below.

(1) Mr. Perry alleges that Mr. Di Prisco violated the *Rules* by neglecting to file a protest after receiving a letter from an employer which stated that no election campaigning would be permitted on employer premises. The facts alleged by Mr. Perry do not constitute a violation of any provisions of the *Rules*. The *Rules* do not impose any obligation on the Secretary-Treasurer to file a protest in such a circumstance, or in any other circumstance. Rather, the *Rules* encourage, but do not require, that any member avail himself or herself of the protest procedures of Article XI of the *Rules* if such member believes that any provisions of the *Rules* have been violated.

Mr. Perry filed a protest against the employer's policy which was resolved by the Election Officer. Accordingly, the matter has been addressed and Mr. Perry's protest concerning Mr. Di Prisco's conduct in this matter is without merit and is therefore DISMISSED.

(2) Mr. Perry also protests the fact that Mr. Di Prisco neglected to file a protest over the attempted transfer of one hundred and twenty (120) members of Local 302. A protest concerning the proposed transfer was filed by Mr. Perry and the protest was granted by the Election Officer. The decision was subsequently appealed to the Independent Administrator, Judge Frederick B. Lacey, who issued a decision affirming the Election Officer's determination. As previously stated, the *Rules* impose no obligation on the Secretary-Treasurer to file such a protest. The claim asserted by Mr. Perry does not constitute a violation of any provision of the *Rules* for the reasons I have stated in the preceding paragraph. Accordingly, Mr. Perry's protest with respect to this issue is DENIED.

(3) The third issue raised by Mr Perry concerns Mr Di Prisco's February 1, 1991 letter and is identical to the claim raised by Perry in a previously filed protest, (P-442-LU302-CSF) A decision denying the protest has been rendered in Section I above Accordingly, Mr Perry's claim in this matter is DENIED

(4) The fourth issue raised by Mr Perry concerns the charges filed by the Executive Board with the Joint Council and is identical to the facts and issue raised in P-494-LU302-CSF A decision denying that protest has been set forth above in Section III above Accordingly, Mr Perry's claim in this matter is DENIED

(5) The fifth issue raised by Mr Perry concerns the allegation that a member of Local 302 informed Perry that the Recording Secretary told him that Perry was misusing the credit card In his protest, Perry alleges that such an allegation could only have originated with the Secretary-Treasurer The investigation conducted by the Election Officer did not disclose any evidence to support these allegations Furthermore, the evidence relied on by Mr Perry to support his allegations constitute double hearsay Such allegations are inherently unreliable and unless substantiated with actual evidence, cannot be the basis of an Election Officer decision The investigation has not disclosed any further evidence Accordingly, the above described claim is dismissed

(6) In his sixth claim, Mr Perry asserts that when he went to his office on February 14, 1991, he found a stack of notices from the Local which contained the names of nominated candidates for the upcoming delegate election Mr Perry alleges that he was given no instructions on what to do with the notices Mr Perry states that the lack of instructions left him with "a feeling of quandary about how to perform his job as a Business Agent " Mr Perry does not allege that he sought instructions from Mr Di Prisco on what to do with the notices, rather he states that he asked the Local Union's secretary if she knew and she denied any knowledge of them

The above described facts do not allege a viable protest under any provisions of the *Rules* Moreover, given Mr Perry's experience with and knowledge about the various provisions of the *Rules*, I do not find his claim that he was in a quandary to be credible However, in the event that Mr Perry is truly uncertain as to what should be done with nomination notices, I refer his attention to Article 11, § 4 of the *Rules* which requires that nomination results must be posted on all Local Union bulletin boards

Accordingly, Mr Perry's protest with respect to this issue is also dismissed

Finally, Mr Perry alleges that he is concerned that Mr Di Prisco may attempt to use the pending Joint Council charges and the February 1, 1991 directive on written communication on Union letterhead to assail Mr Perry in his campaign literature I must reject this claim for two reasons First of all, Mr Perry's protest complains of events that have not yet occurred Hypothetical events cannot constitute violations of the *Rules* More importantly, even if future campaign literature refers to events which have occurred between Mr Perry and Mr Di Prisco, such literature would most likely

not violate the *Rules*. Indeed, the fact that campaign literature allegedly contains false, irrelevant or even defamatory information does not remove it from the protection of the *Election 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, are protected). The policy encouraging robust political debate in the selection of delegates and International Officers of the IBT is reflected in the *Election Rules'* prohibition against the censorship of campaign literature. See Article VIII, § 6 (g)

Finally, the *Rules* permit Mr Perry himself to cite the fact that he has filed protests against Mr Di Prisco in his own campaign literature, and, in fact, Mr Perry referred to his successful protest against an employer, Berkeley Farm, in recent campaign literature

Accordingly, the above described protest is DENIED

V. P-521-LU302-CSF - Use of Union Publication For Campaigning

On February 15, 1991, Mr Di Prisco filed a protest with the Election Officer alleging that Mr Perry had used the "Rank & Filer" newsletter for campaigning purposes and had misrepresented his position on the newsletter's editorial committee. Di Prisco also alleges that Perry prepared the newsletter on Union time in violation of the *Rules* and that employer funds were used to publish the newspaper. All of the issues raised by Di Prisco in the above referenced protest are identical to the issues raised by Mr Angelich in P-482-LU302-CSF. The Election Officer's decision and remedy in P-482-LU302-CSF addresses all the issues raised by Mr. Di Prisco. Accordingly, Mr Di Prisco's protest is DISMISSED

VI. Conclusion and Remedy

In conclusion I find that Issue No 2 of the newsletter contained campaign material³. I further find that Mr Perry violated the *Rules* by publishing and disseminating Issue No 2 of the newsletter in a format that either directly stated, or strongly suggested, that the newsletter was an official Executive Board or Local Union publication. Since that newsletter contained campaign literature, its publication and dissemination under the guise of an official Union publication violated the *Rules*.

Accordingly, I order the following remedy. Mr Perry is required to post the attached notice on all Local Union bulletin boards. The cost of printing and distributing the notice shall be borne exclusively by Mr Perry.

³To the extent that Issue No 3 contained campaign material, its publication did not violate the *Rules* since it was not produced with either Union or employer funds and could not be mistaken for an official Union publication.

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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
Donald E. Twohey, Regional Coordinator

NOTICE TO ALL LOCAL 302 MEMBERS

It has been determined by the Election Officer, pursuant to his authority under the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") that Issues No 2 of the Local Union newsletter, which was authored and disseminated by me, was in violation of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*")

The newsletter erroneously indicated that the newsletter was authored or supported by either Local 302 or the Local's Executive Board. In fact, members of the Executive Board had no knowledge of the contents of that issue of the newsletter prior to its dissemination. The contents of the newsletter was not endorsed by Local 302 or its Executive Board.

Finally, the newsletter contained campaign material in support of my candidacy for delegate to the IBT Convention, also in violation of the *Rules*. I will cease and desist from any further like or similar violations of the *Rules*.

David Perry, Vice President and Business Agent, Local Union 302