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Election Officer

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March 18, 1991

VIA UPS OVERNIGHT

William Fleeger
4151 Bathel
Houston, TX 77092

Richard Hammond
President
IBT Local Union 988
3100 Katy Freeway
Houston, TX 77270

Re: Election Office Case No. P-538-LU988-SOU

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 William Fleeger, a member of Local 988 and a candidate for delegate from that Local. Mr. Fleeger contends that the Local has not processed two grievances filed by him on January 7, 1991 and January 13, 1991, respectively, because of his candidacy.¹

The investigation of this protest revealed that Mr. Fleeger did file two grievances in January, 1991. The first grievance, dated January 7, 1991, concerned a change in insurance coverage. The Local states that its Business Agent, Bill Sowell, has presented this grievance to Mr. Fleeger's employer, Houston Dairy, and at present the Local is awaiting information from the company, which is being provided by the insurance carrier. The Local states that the grievance is pending and will be further processed after the information is received.

The second grievance, dated January 13, 1991, concerned the employer's withholding of Mr. Fleeger's paycheck on January 11, 1991 due to his failure to sign an insurance form. Mr. Fleeger states that he was advised by company personnel that he would not receive his paycheck unless and until he signed the required insurance

¹During the course of the investigation, Mr. Fleeger supplied information about a third grievance which he also contends was not processed properly by Local 988. The Election Officer has determined to treat that matter separately. An acknowledgement of that matter as a separate protest is being sent to all parties and a subsequent decision will issue.

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form Mr Fleeger contacted the Local Union office and spoke to an employee of that office, first name of Lee, and advised the Local Union of the company's actions Mr Fleeger states that he did not receive his paycheck on that date but the paycheck was delivered to him the following Monday The Local Union states that its Business Agent Bill Sowell did contact the company on January 11, 1991. The Local states that Mr Sowell at that time obtained the agreement of the company to give Mr Fleeger his paycheck and to avoid any future withholding of paychecks for the purposes of signing this type of employment form, and so advised Mr Fleeger Mr. Fleeger denies having spoken to the Union subsequent to his conversation with "Lee" and knows of no action taken by the Union in connection with the grievance

Article VIII, § 10 (a) of the *Rules* guarantees that all Union members retain the right to participate in campaign activities, including the right to run for office Implicit in this right is the further right to be free from retaliation by either the Local Union or the employer due to any member's exercise of the rights contained in the *Rules* In the instant case, the facts do not support a finding that the Local has retaliated against Mr Fleeger for his candidacy based upon the Local's action on these two grievances

With regard to the first grievance, the Local maintains that the grievance is being processed via the grievance procedure through its Business Agent and representatives of the company The grievance is clearly one which affects all bargaining unit members and is not particular to Mr Fleeger No evidence has been presented to suggest that the Local is not pursuing the grievance as stated and therefore the Election Officer finds that the Local has not failed to pursue Mr Fleeger's January 7, 1991 grievance in retaliation for his candidacy for delegate.

Mr Fleeger and the Local present very different statements as to the processing of the second grievance filed on January 13, 1991. The Local maintains that the grievance was resolved on the date of the occurrence which gave rise to the grievance, prior to the grievance even being filed The Local contends that Mr. Fleeger was advised of this disposition However, Mr Fleeger maintains that he did not speak with any Local Union officials after first reporting the incident of his paycheck on January 11, 1991 or at any time thereafter. The Election Officer determines that it is unnecessary to determine whether or not the grievance was resolved on January 11, 1991 in the manner stated by the Local The immediate harm to Mr Fleeger, the withholding of his paycheck, was remedied on January 13, 1991 The Local further maintains that it is continuing to process the grievance filed by Mr Fleeger concerning the incident on January 13, 1991

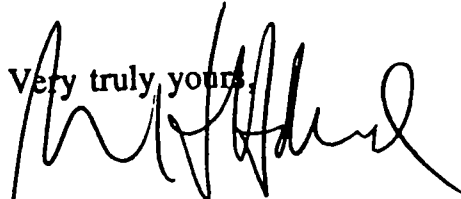
The Election Officer therefore finds that the Local has not failed to process Mr Fleeger's grievances because of his candidacy Accordingly, the protest is DENIED

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

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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
Larry R Daves, Regional Coordinator