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Election Officer

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March 8, 1991

VIA UPS OVERNIGHT

Bill Underhill
Rt #1 Box 286
Brighton, MO 65617

Jim Kabell
President
IBT Local Union 245
1850 E Division
Springfield, MO 65803

Re: Election Office Case No. P-618-LU245-MOI

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"), by Bill Underhill, a member of Local 245 and a candidate for delegate to the 1991 IBT International Convention. Mr Underhill contends that candidates opposing him for the position of delegate distributed and posted campaign material which "smeared" him. Mr Underhill states that his employer removed this campaign material from the bulletin board. Mr Underhill also complains about a television interview in which Jim Kabell, President of Local 245, made allegedly untrue statements concerning Ron Carey, a candidate for International President.

The campaign material distributed and posted concerning the complainant, Mr Underhill, is clearly just that, campaign material. The fact that the excerpts from the Company brief which is contained in the literature, may be false, irrelevant, or even defamatory does not remove it from the protection of the *Rules National Association of Letter Carriers v Austin*, 418 U S 264 (1974), *Salzhandler v Caputo*, 316 F 2d 445 (2nd Cir 1963). The policy encouraging political debate in the selection of delegates is reflected by the *Rules'* prohibition against censorship of campaign literature. Article VIII, § 6 (g) of the *Rules*. Thus, the literature distributed and posted which Mr Underhill complains of is not violative of the *Rules*.

The remarks made by Mr Kabell in his television appearance are also not a violation of the *Rules* for the same reasons. The Election Officer has already made a determination on a protest concerning that television appearance, finding that the principles set forth above apply to television appearances as well as literature. (See Election Office Case No P-562-LU245-MOI, protest of Fred L Veregge, letter dated March 4, 1991)

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Finally, the Election Officer would note that the removal of the campaign literature by the employer is a violation of the *Rules*. The Local Union has been directed to post a notice concerning allegations that campaign material has been removed from bulletin boards in connection with Election Office Case No P-593-LU245-MOI, protest of Fred Veregge, letter dated March 5, 1991. The posting states in pertinent part, "It is a violation of the Election *Rules* for any company official, Union officer, business agent, steward, or member to remove campaign postings."

For the reasons set forth above, 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 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
Michael D Gordon, Regional Coordinator