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April 10, 1991

VIA UPS OVERNIGHT

Henry Steger
1401 Walenta
Rosenberg, TX 77471

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

John Bryan
109 Crocus
Lake Jackson, TX 77566

Re: Election Office Case No. P-688-LU988-SOU

Gentlemen

A pre-election protest was filed in accordance with Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") The protest was filed by John Bryan and Henry Steger, both of whom are members of Local 988 and were delegates on the "Rank and File Slate for Ron Carey" slate in Local 988's recent delegate election¹

The protestors allege that Richard Hammond, President of Local 988 and successful slate candidate on the "Hammond Leadership Team" slate in Local 988's recent delegate election, permitted campaigning in support of his candidacy at a Local Union meeting in violation of Article VIII of the *Rules* and in violation of the Local's policy with respect to campaigning at Union meetings The protestors also allege that Mr. Hammond and his supporters violated the *Rules* by distributing t-shirts and campaign buttons before and after the general membership meeting

An investigation was conducted by Adjunct Coordinators Taylor Hart and Frances Cusack The investigation disclosed the following facts In December, 1990, Mr. John Sharp, newly elected comptroller for the State of Texas, asked the Local if he could attend a Union meeting to formally thank the membership for their support on behalf of his successful campaign for state comptroller The Local notified Mr. Sharp that he

¹Local 988 delegate election was held on March 28, 1991 A post-election protest was filed, Election Office Case No. Post-66-LU988-SOU, based, in part, on the same event which is the basis for this protest This decision will thus resolve that portion of the post-election protest

could attend the March 17, 1991 meeting Mr Sharp spoke at the beginning of the meeting for approximately five minutes and told those in attendance that the purpose of his remarks was to express his appreciation to the members and leadership of Local 988 for their efforts on behalf of his candidacy for State Comptroller Mr Sharp also congratulated the members and Mr Hammond on the fact that Local 988 was the most visible and politically effective union in the state Mr Sharp went on to comment that Mr Hammond was a great labor leader who had done much to advance the cause of working people in the State of Texas Mr Sharp left the hall immediately after concluding his remarks

Approximately one hour later, while the meeting was still in process but nearing adjournment, Mike Wagner, a member of Local 988, stood up and addressed John Bryan, one of the protestors Mr Wagner stated that Mr Bryan was "stabbing Richard Hammond in the back " When Mr Bryan denied making such a statement, Wagner responded that at a recent meeting at a truck stop, he had heard Bryan call President Hammond a crook and that he had heard Bryan say that Hammond had misled the membership about his salary A shouting match ensued between Bryan and Wagner which lasted for several minutes until President Hammond reestablished order at the meeting Mr Hammond then asked Mr Bryan to come to the podium and explain and clarify his remarks but Mr Bryan refused

A few minutes later, while the meeting was still in process, Mr Bryan turned towards the back of the room and stated out loud that Mr Hammond had lied about his salary At this point, Mr Hammond asked Mr Bryan to repeat his accusation and to produce proof and Mr Bryan declined Mr Hammond then attempted to give Mr Bryan copies of his W-2 forms Bryan refused to accept them and Mr Hammond then pitched them on the floor stating that any member could have them if he wanted them ²

Article VIII, § 4 of the *Rules* provides that

The Local Union need not allow time for campaigning during any of its meetings However, if such time is granted, the Local Union shall notify all candidates who request such notice of the opportunity to speak at least five (5) days prior to the meeting and shall divide the time equally between those candidates who request an opportunity to speak

In order to determine whether the Rule stated above was violated, we must first resolve the issue of whether Mr Sharp's comments and Mr Hammond's actions constituted campaigning within the meaning of the Article VIII of the *Rules* The protestors and Mr Hammond agree that Mr Sharp spoke for only 5 minutes and then quickly left the meeting In addition, Mr Sharp's comments were general in nature and there is no

²Bryan contends that thereafter the forms were thrown at him by another member of the Local, one of Hammond's supporters Hammond denies instructing anyone to act in this manner

evidence to indicate that Mr Hammond solicited Mr Sharp to support his candidacy for delegate Mr Sharp made no reference at all concerning the upcoming delegate election or Mr Hammond's campaign for delegate Mr Sharp's comments in thanking the members of Local 988 and their leadership and extolling Mr Hammond's contribution to the labor movement were brief and cannot be considered campaigning within the meaning of the *Rules*

In addition, Mr Hammond's actions also do not constitute campaigning within the meaning of the *Rules* The evidence revealed that Mr Hammond tried to restore order to the meeting and only attempted to publicly respond to Mr Bryan's accusations after Mr Bryan faced the back of the room and began talking to members, interrupting the order of business of the meeting Mr Hammond did not initiate the discussion concerning his salary but rather responded to the argument which took place between Mr Wagner and Mr Bryan

Mr Steger also protests the fact that Mr Hammond and his supporters gave away t-shirts and campaign buttons, stating that "TDU Sucks" Mr Steger complains that the campaign buttons constitute negative campaigning and intimidated the members of Local 988 The model for free and fair Union elections is that of partisan political elections In those elections, contestants are generally allowed to make whatever assertions, allegations, statements of opinion or even of alleged facts without legal sanctions for their truth or falseness The cardinal principle is that the best remedy for untrue speech is more free speech, with the electorate being the final arbiter As long as the literature in question does not purport to be the official voice of the organization, as opposed to being the opinions of the candidates who may be officers, inquiry will not generally be made as to its truth or falseness A review of the campaign literature and buttons in question clearly establishes that the literature does not purport to be the official voice of the Local Union and instead it is identified as the literature of the "Hammond Leadership Team" campaign

Thus, the fact that campaign statements are allegedly false, irrelevant or even defamatory does not remove them from the protection of the *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, protected) The policy of encouraging robust debate in the selection of delegates and International Officers of the IBT is reflected in the *Rules'* prohibition of censorship of campaign literature See *Rules*, Article VII, § 6 (g)

The investigation also disclosed that Mr Steger and Mr Bryan and other members of their slate and their supporters also distributed campaign literature before and after the meeting Moreover, Mr Steger's allegations with respect to the t-shirts and buttons do not constitute a violation within the meaning of the *Rules* since both groups of candidates were permitted to campaign and solicit support before and after the meeting The *Rules* provide that

Henry Steger
Page 4

No restrictions shall be placed upon candidates' or members' pre-existing rights to solicit support, distribute leaflets or literature, conduct campaign rallies, hold fund-raising events or engage in similar activities on employer or Union premises

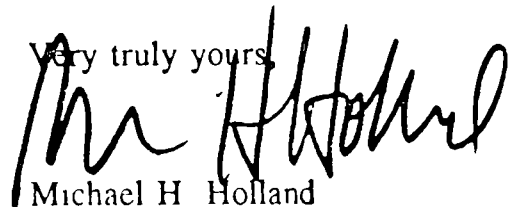
There is no evidence to suggest that Mr Hammond or any other individual placed any restrictions on Mr Bryan or Mr Steger or any of their supporters, both groups of candidates were entitled to and in fact did distribute campaign literature and/or t-shirts and buttons before and after the meeting Accordingly, the above described claim fails to state a violation under any of the *Rules*

Additionally, Mr Steger was interviewed by Adjunct Coordinator Hart and during the course of the interview Mr Steger stated that he himself never felt intimidated by the activities which took place before, during or after the meeting, nor was there anything about Mr Hammond's conduct which intimidated him during the March 17, 1991 meeting Accordingly, there is no evidence to sustain Mr Steger's allegations that Mr Hammond's conduct intimidated the members Accordingly, the allegations concerning intimidation are not supported by the evidence

In conclusion, the protests alleged by Mr Steger and Mr Bryan are lacking in evidence and fail to state a violation under any provisions of the *Rules* Accordingly, the protest is DENIED in all respects

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
Larry R Daves, Regional Coordinator