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August 6, 1991

VIA UPS OVERNIGHT

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Bob Ferguson
Recording Secretary
IBT Local Union 377
1223 Teamsters Drive
Youngstown, OH 44502

Robert Eliser
Frank Licate
Rocky Mitolo
Eben Byers, Jr.
Larry Spencer
James Bain
Robert Bernat
c/o IBT Local Union 377
1223 Teamsters Drive
Youngstown, OH 44502

Re: Election Office Case No. P-817-LU377-CLE

Gentlemen, Ms. Ferguson and Ms. Bates:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules") by four members of Local 377. The protest, filed against Robert Eliser, Frank Licate, Rocky Mitolo, Eben Byers, Jr., Larry Spencer and James Bain - according to the protesters all officers of the Local constituting a majority of the Executive Board of Local 377 - alleges that the *Rules* were violated when this Executive Board majority voted to send and pay the expenses of two members, who had unsuccessfully sought election as delegates to attend the 1991 IBT International Union Convention, to attend that Convention as guests of the Local. The protest was investigated by Regional Coordinator Joyce Goldstein.

Four slates or partial slates as well as independent candidates ran in the election for delegates and alternate delegates to the 1991 IBT International Union Convention from Local 377. One slate, the Dooney's Choice Slate, included A. Dooney Sammarone and Bob "Fergy" Ferguson, Secretary-Treasurer and Recording Secretary, respectively, of Local 377. The other candidates on Dooney's Choice Slate were neither officers nor business agents of local 377. Messrs. Sammarone and Ferguson were successful delegate candidates; the other delegate and alternate delegate candidates on Dooney's Choice Slate were defeated.

Another slate competing in the Local 377 delegate and alternate delegate slate, the Democratic Slate, included the President of Local Union 377, Robert "Bob" Eliser, two of the three Local Union trustees, Larry Spencer and Eben Byers, Jr., and a business agent of Local 377, Frank J. Licate. Two other members of the Democratic Slate, Rocky Mitolo and Robert Bernat, while neither officers nor business agents of the Local at the time of the delegate and alternate delegate election, were subsequently appointed as Local Union business agents, as was Trustee Eben Byers, Jr. Mr. Licate was also appointed after the date of the delegate and alternate election to the position of Vice President of the Local Union. Other than Messrs. Byers and Bernat, all delegate and alternate delegate candidates on the Democratic Slate were elected.

All Officers and Executive Board members of Local 377 other than trustee James Bain and then-Vice President Michael Boano were candidates from Local 377 to the 1991 IBT International Union Convention. All Officers and Executive Board members who sought election, other than Trustee Eben Byers, Jr., were elected.

The election results for the delegate and alternate delegate election for Local 377 were announced on March 8, 1991. At the next Executive Board meeting, held on March 26, 1991, the Executive Board voted to send and pay the expenses of Trustee Eben Byers Jr. and Robert Bernat, the two unsuccessful candidates on the Democratic Slate, to the 1991 IBT International Union Convention as guests of the Local. Local 377 President Eliser and Trustees Spencer, Byers and Bain voted in favor of the motion; Local 377 Secretary-Treasurer Sammarone and Recording Secretary Ferguson voted against the motion.¹ At the same meeting, Robert Bernat was appointed a business agent of Local 377, with Messrs. Sammarone and Ferguson voting against the appointment.

The minutes of the March 26, 1991 Executive Board meeting, prepared by Recording Secretary Ferguson, reflect that the motion was to send "the loosing [sic] officers and agents" to attend the 1991 Convention as guests of the Local Union. Such losing officers and agents would have included only Trustee Byers and Mr. Bernat, appointed as a business agent at the March 26, 1991 meeting. Messrs. Byers and Bernat

¹The Election Officer's investigation was unable to determine whether Mike Boano, then the Vice President of Local 377 who subsequently resigned from that position, was present at the meeting.

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were the only two losing candidates on the Democratic Slate, headed by Local Union President Eliser.

Frank Licate, who attended the meeting as a business agent, without any right to vote on any motions made at the Executive Board meeting, states, however, that the discussion at the meeting was in terms of sending as guests of the Local Union all Executive Board members and business agents who were not otherwise attending the 1991 International Union Convention as delegates or alternate delegates. In that case, the motion would have included, in addition to Trustee Byers and Mr. Bernat, Trustee Bain who had not sought election as a delegate or alternate delegate to the 1991 Convention.

Mr. Ferguson agrees that his minutes of the March 26, 1991 Executive Board meeting did not fully reflect the discussion. Mr. Ferguson has stated that he will change those minutes to reflect that the motion did not refer to losing candidates.

The majority of the Executive Board state that their purpose in voting to send Messrs. Bernat and Byers to the Convention as guests of the Local was to enhance Messrs. Bernat's and Byer's experience and understanding of the IBT. Both were newly appointed business agents and the Executive Board majority contends that the knowledge gained from attendance at an International Convention would better able them to represent the Local's membership.

At the April 10, 1991 and/or May 8, 1991 general membership meetings of Local 377, an attempt was made by the members there in attendance to vote down the minutes of the March 26, 1991 Executive Board meeting. The minutes for the May 8, 1991 general membership meeting reflect that by a show of hands, the members in attendance at that meeting voted down the minutes of the March 26, 1991 Executive Board meeting.

Local Union 377's legal counsel advised the Local Union President and Secretary-Treasurer that the general membership meeting vote to reject the minutes of the March 26, 1991 Executive Board meeting did not invalidate any action taken by the Executive Board when such action was within the exclusive authority of the Executive Board. Counsel further advised that the provision of allowances, direct and indirect disbursements, expenses and reimbursement expenses for officers and business agents of the Local was within the exclusive jurisdiction of the Executive Board of Local 377. Finally, counsel stated that in his opinion, the actions taken by the Executive Board at its March 26, 1991 meeting remained in full force and effect and were not invalidated by the general membership meeting vote.

Robert Bernat attended the 1991 IBT International Union Convention as a guest and at the expense of Local 377. Mr. Byers, despite the action taken by the Executive Board at its March 26, 1991 meeting, decided not to attend the Convention. Local Union 377 sent and paid the expenses of all its delegates and alternate delegates to attend the Convention.

The *Rules* required all Local Unions to send and pay the expenses of all their delegates to attend the 1991 IBT International Union Convention. The *Rules* also require the Locals to send and pay the expenses of their alternate delegates, if the Local has so provided in its approved Local Union Election Plan. The *Rules* neither required nor prohibited a Local Union from sending or paying the expenses of guests to attend the 1991 IBT International Union Convention. However, as noted in the Advisory Regarding Convention Expenses, issued April 19, 1991 ("Advisory"):

Attendance at the 1991 IBT International Union Convention is Union business; it is not a vacation or holiday. Further, the underlying purposes of the Consent Order, as well as the Labor Management Reporting and Disclosure Act, prohibit the utilization of Union funds, except for the benefit of the organization and its members. Thus, it will be considered to constitute misuse of Union funds for the Local Union to pay the expenses of spouses or family members attending the Convention. This prohibition does not extend to the expenses of guests (subject to the limitations and requirements noted herein), whose attendance is reasonably related to the business of the Convention, such as retiree representatives or Union members with designated duties and responsibilities in connection with the proceedings of the Convention, or with official Union meetings held attendant to the Convention.

In accordance with the foregoing, payment by a Local of the expenses of a guest to attend the 1991 IBT International Union Convention is not be considered a misuse of Union funds so long as the attendance by the guest at the Convention was reasonably related to the business of the Convention, or the guest had duties and responsibilities in connections with the proceedings of the Convention, or with official meetings held attendant to the Convention. The payment of the expenses of a guest to attend the Convention, whose attendance was not reasonably related to the business of the Convention, or who did not have designated duties and responsibilities in connection with the proceedings of the Conventions or with official Union meetings held attendant to the Convention, might well constitute the misuse of Local Union funds.

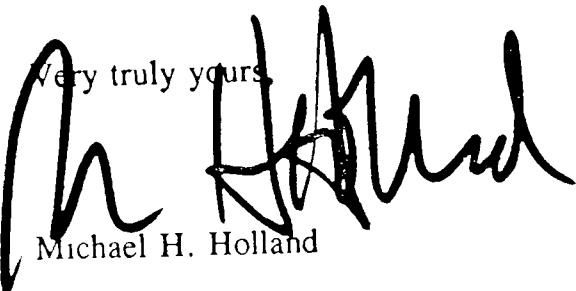
The Election Officer finds that attendance by newly appointed business agents at the 1991 IBT International Union Convention for the reasons proffered here, enhanced knowledge and experience, are sufficiently related to the business of the Convention and the business of the Local so as to permit the Local to pay their expenses without violating the *Rules*. Thus the Election Officer finds that neither Local 377 nor any

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members of its Executive Board violated the *Rules* when the majority of the Executive Board voted to send Messrs. Bernat and Byers to the 1991 IBT International Union Convention as guests of the Local. Neither did the Local nor any members of its Executive Board violate the *Rules* by paying the expenses incurred by Mr. Bernat in connection with his attendance at the Convention.

The Election Officer makes no decision regarding whether the decision of the Local and/or the method by which the decision of the Local was made to send guests to the 1991 IBT International Union Convention was or was not in accord with the by-laws of Local 377 or the IBT International Union Constitution. The issue concerning the right of a general membership meeting of Local 377 to overrule the Executive Board on this or any other issue is a matter subject to the interpretation and application of the Local's by-laws and the International Union Constitution. Since neither the *Rules* nor the nomination or election processes for delegate or International officer are implicated in this case whether the Local did or did not act in accord with its by-laws and the International Constitution in sending and paying the expenses of Mr. Bernat to attend the 1991 IBT International Union Convention, the matter is beyond the Election Officer's jurisdiction under the March 14, 1991 Consent Order and the *Rules*. The propriety of the Local's decision and payment under its by-laws and the IBT International Union Constitution is a matter subject to the internal Union procedures described in those documents.

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/mjv

cc: Frederick B. Lacey, Independent Administrator
 Joyce Goldstein, Regional Coordinator