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Michael H Holland
Election Officer

October 15, 1991

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VIA UPS OVERNIGHT

Archie J. Cook
4508 Balmoral Drive
Richton Park, Illinois 60471

Leroy Ellis
18807 Oakwood Drive
Country Club Hills, Illinois 60477

Donald Sawochka
Secretary-Treasurer
IBT Local 142
1300 Clark Road
Gary, Indiana 46404

Re: Election Office Case No. P-919-LU142-CHI

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Archie J. Cook. In his protest, Mr. Cook alleges that IBT Local Union 142 unreasonably delayed in responding to the request of Leroy Ellis, a nominated candidate for International Union Vice President from the Central Conference, for the list of worksites where Local Union 142 members are employed. The Election Officer's investigation revealed the following.

Leroy Ellis is a nominated candidate for the office of International Union Vice President from the Central Conference. In an undated letter to Donald Sawochka, the Secretary-Treasurer of Local 142, Mr. Ellis requested the list of all worksites where members of Local Union 142 are employed. Mr. Ellis requested that the worksite list be mailed to him at his home address in Country Club Hills, Illinois. Mr. Ellis cited Article VIII, §1 of the *Rules* in support of his request and stated, quoting the *Rules*, that the request was to be honored within five (5) days.

By letter dated August 22, 1991, Local 142 responded to Mr. Ellis' request. In its response, Local Union 142 noted that the worksite list is not to be used for any purpose other than Mr. Ellis' campaign. See *Rules*, Article VIII, § 1(d). The letter asks that Mr. Ellis sign an acknowledgement to that effect. The letter indicated that Mr. Ellis should call Local 142, provide it with the acknowledgement and make arrangements to come to the Local Union hall to pick up the worksite list.

Mr. Ellis signed the acknowledgement form contained in the Local's August 22, 1991 letter and returned it, by mail, to the Local Union. The Local Union received the letter, with Mr. Ellis' signature on the acknowledgement, on September 9, 1991. Mr.

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Ellis, however, did not go the Local's offices to pick up the list or send a representative on his behalf to do so.¹

Mr. Cook contends, however, that he called Local Union 142 prior to the time that Mr. Ellis signed and returned the acknowledgement to the Local. Mr. Cook states that he was told by the Local that Mr. Ellis should remit to it the acknowledgement by mail and that the list would be mailed to Mr. Ellis. Local 142 denies that any of its officers, employees or agents had such telephone conversation with Mr. Cook.

According to Mr. Cook, as noted above, he had the conversation with Local 142 prior to the time Mr. Ellis returned the signed acknowledgment to the Local. The signed acknowledgement, according to Mr. Ellis, was mailed back to the Local on August 30, 1991. The Local received the signed acknowledgement on September 9, 1991. Mr. Cook contends that, based on his conversation with Local 142, that the list was to be mailed thereafter. Although Mr. Ellis did not receive the list, neither he nor Mr. Cook contacted the Local again. Instead the instant protest was filed.

Article VIII, § 1 of the *Rules* requires Local Unions to permit candidates the right to inspect collective bargaining agreements covering the Local Union's members; the purpose of the *Rule* is to permit candidates and their campaigns to determine where members are employed so that candidates may campaign among such members. Under the *Rules*, the Local Union may satisfy this obligation by "providing within the five day period set forth above, a list of all the sites with addresses where any and all of its members work." Article VIII, §1(c). Further, the Election Officer has held that a Local is obliged to provide the worksite list when review of the collective bargaining agreement will not yield the street addresses of all worksites where the Local's members are employed. Local Union 142 has elected to provide candidates with copies of the worksite list.

Upon the filing of this protest, Local 142 provided a worksite list to Mr. Ellis. Even assuming that Local 142 delayed the delivery of the list for a short period,² Mr. Ellis received the list in sufficient time to conduct his campaign since the ballots for the International officer election will not be mailed for six (6) weeks and since the election will not occur until December 10, 1991. Under ordinary circumstances, the Election Officer would now consider the case to be resolved.

In the instant case, however, it appears that the Local has members at

¹ Article VIII, §11 of the *Rules* provides that any International officer candidate may authorize any member of the Union to serve as his/her representative. That section of the *Rules* goes on to state that the representative has the same rights as does the candidate under the terms of Article VIII. Accordingly, Mr. Ellis was not obligated to personally pick up the list but could authorize any IBT member to do so on his behalf.

² The Election Officer also notes that Mr. Ellis caused part of the delay by failing to remain in communication with Local 142.

approximately 361 worksites. Of the 361 worksites on the list originally provided, approximately 223 were inadequate because they did not list specific addresses, but rather listed only the corporate (not worksite) address, or provided only a Post Office number. When apprised of these facts, Local 142 provided a corrected list, providing actual worksite addresses for an additional 85 employers. The corrected list also noted that twelve (12) of the employers identified in the original worksite list were out of business or involved in liquidation proceedings, while two (2) did not employ any IBT members.

Although Local 142 provided the corrected list within a day after being notified by the Regional Coordinator of the inadequacy of its original list, its failure to provide appropriate worksite addresses for over two-thirds of the worksites where its members are employed cannot be condoned under the *Rules*. Local 142 was well aware of the requirement that the worksite list was to contain actual worksite addresses, not corporate headquarters or Post Office box numbers; furthermore, the Local was well aware that the worksite list was to contain addresses of worksites where its members were employed, not worksites employing no IBT members. Over a month elapsed between the time the Local Union received the request for the worksite list and the date it provided the first worksite list to Mr. Ellis; the Local had sufficient time to ensure that the worksite list provided contained adequate and appropriate worksite addresses.

Further, even the new worksite list provided by Local 142 does not meet the requirements of Article VIII, §1 of the *Rules*. The only addresses provided for fifteen (15) employers remain Post Office box numbers. Eighty-nine (89) employers are listed as being construction companies with "job sites on highways, steel mills, etc."; no worksite addresses are given for any of the IBT members employed by such companies. Similarly, IBT members employed by an additional twenty (20) employers are noted as working for iron and steel haulers "probably located somewhere in the mills, Port of Indiana, etc."; again no actual worksite addresses are provided.

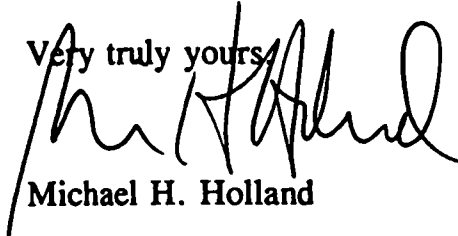
The *Rules* have been violated by Local Union 142's failure to timely and adequately provide a worksite list upon request of a nominated candidate for IBT International Union Vice President. To remedy this violation, Local 142 shall bear the costs of duplicating and mailing campaign literature on behalf of Leroy Ellis to all its members employed by employers whose worksites were not identified in the corrected worksite list provided by Local 142, that is all Local 142 members employed by the fifteen (15) employers whose only address remains a Post Office box number as well as those employed by the eighty-nine (89) construction companies and the twenty (20) iron and steel haulers. The literature to be so mailed shall be tendered to Local 142 by Mr. Ellis. The literature so tendered shall not exceed one page, 8½ by 11 inches, shall not contain any photographs, and shall be suitable for mailing in a tri-fold format without a separate envelop. Mr. Ellis shall submit a copy of his literature to the Election Officer at the same time he tenders it to Local 142. Within seven (7) days of its receipt from Mr. Ellis of his campaign literature, the Local shall duplicate, address and mail such literature to all its members employed by the 124 employers identified above. Local 142 shall submit an affidavit to the Election Officer within three (3) days after it completes

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such mailing demonstrating that it has complied with this decision.

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

Julie Hamos, Regional Coordinator

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ETP

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JMH
BJH
JJS

IN RE:

LEROY ELLIS

and

IBT LOCAL UNION 142

91 - Elec. App. - 206 (SA)

DECISION OF THE
INDEPENDENT ADMINISTRATOR

This matter arises as an appeal from a decision of the Election Officer in Case No. [REDACTED]. A hearing was held before me by way of teleconference at which the following persons were heard: Archie J. Cook, on behalf of the complainant Leroy Ellis; John J. Sullivan and Barbara Hillman, on behalf of the Election Officer; Julie E. Hamos, a Regional Coordinator; and Marvin Gittler, on behalf of IBT Local 142. The Election Officer also submitted a written Summary in accordance with Article XI, Section 1.a.(7) of the Rules For The IBT International Union Delegate and Officer Election (the "Election Rules").

This case involves Article VIII, Section 1(c) of the Election Rules. That provision allows a Local Union to satisfy its obligation to allow candidates to inspect collective bargaining agreements by providing "a list of all the sites with addresses where any and all of its members work."

The complainant herein alleges that Local 142 delayed its production of a worksite list and it is further alleged that once the worksite list was produced, it was incomplete.

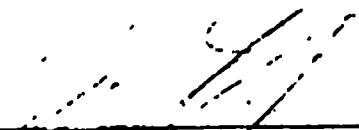
The Election Officer found that while there was some delay in the Local's production of the worksite list the Local did not act intentionally in delaying production and, in fact, the complainant contributed to the delay by not following-up with the Local in a timely manner. The Election Officer's findings in this regard are well-founded in the record and I adopt them here.

The Election Officer did find, however, that the worksite list that the Local did provide was incomplete. Again, no finding was made that the Local acted intentionally to obstruct the complainant's efforts to obtain a complete worksite list. The indication is that the Local provided all of the information that it had. In total, the Local failed to provide appropriate worksite information for 134 employers. To remedy this violation, the Election Officer ordered a mailing, to be paid for by the Local, to the home of each of the members employed at the 134 sites. The Election Officer found that this mailing would permit the complainant to reach those who work at the locations which were omitted from or improperly described in the worksite list. This is consistent with remedies previously affirmed by the Independent Administrator. See, e.g., In Re: Moerler, 91 - Elec. App. - 102 (SA) (March 19, 1991).

The complainant appealed the Election Officer's decision, arguing that a mailing to all members of the Local, not just those employed at the 134 sites, is required. The complainant's suggestion of a broader mailing is not warranted. Other than the

134 employers, the complainant was provided accurate worksite addresses for all other work locations of Local 142 members.

Accordingly, the decision of the Election Officer is affirmed in all respects.



Frederick B. Lacey
Independent Administrator
By: Stuart Alderoty, Designee

Dated: October 24, 1991