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March 15, 1991

VIA UPS OVERNIGHT

A Proven Team For the New Era Slate
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Wayne J Rechlicz
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Re: Election Office Case No. Post-19-LU200-NCE

Gentlemen:

A post-election protest was filed by Mr. Kenneth Friesner pursuant to Article XI, § 1 of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules"), asserting that he and other candidates from his slate were deprived of a fair and democratic election in several respects. He alleges that the Representative of the Election Officer posted an incorrect tally sheet, that the Election Officer's Representative incorrectly stated that the individual receiving the eleventh largest number of votes would be the alternate delegate and that the Election Officer Representative failed to pick up and count all of the ballots received by the West Allis Post Office on the day for the counting of ballots. Mr. Friesner requests that ballots postmarked through the date of January 28, 1991 be checked for eligibility, and those that are found eligible be counted.

Three slates and a number of independent candidates ran for ten delegate positions. A total of thirty-nine (39) delegate candidates were on the ballot. The margin between the elected delegate candidate with the lowest number of votes (Mark Monty - 958 votes) and the candidate for delegate receiving the next highest number of votes (Dan Berczyk - 955 votes) was three votes. Kenneth Friesner is the Secretary-Treasurer of Local 200 and ran as a candidate on a slate of seven candidates called the "A Proven Team For The New Era Slate."

With regard to the question of the allegedly incorrect tally sheet and the identification of the alternate delegate for the Local, these matters were immediately corrected by Election Officer Regional Coordinator, Barbara Z. Quindel, who completed a corrected tally sheet and affirmed that John Schmidt, who had run unopposed for the alternate delegate position was indeed the alternate delegate. Accordingly, these matters have been RESOLVED.

As of the day of the ballot count, January 28, 1991, ballots were in the process of being received by the West Allis, Wisconsin Post Office for the delegate elections at Local 200 and also at IBT Local 344. There was some confusion of the ballots between the Post Office boxes for the elections at the two Locals, with thirty-three (33) ballots for Local 344's election mixed in with ballots from Local 200. Likewise, when the vote count took place for Local 344 on February 8, 1991, one envelope for Local 200 was found among those ballots, since it was post-marked February 2, 1991, it could not have been received in time for counting in the Local 200 election.

When the observers and the Election Officer Representative arrived at the West Allis Post Office at 12 00 noon on January 28, 1991 to collect the ballots for the Local 200 election, postal officials had not completed the sorting of that day's mail. Postal officials have confirmed that the truck which brings in most of the relevant mail arrived late on January 28, 1991. Thus, the mail delivered to the West Allis Post Office on that date was not sorted prior to the pick-up by the Election Officer Representative and the observers. Moreover, postal officials have indicated that some persons brought in by hand ballots to the Post Office on that date, which were subsequently sorted into the appropriate Post Office box that day. When Election Officer Representative Daniel Koen called the West Allis Post Office at approximately 1 30 p m on January 28, 1991, postal officials indicated that there were approximately 65 additional ballots present in the Post Office box for the Local 200 election.

On February 22, 1991, a Representative of the Election Office went to the West Allis Post Office at 3 10 p m, in the presence of observers, to ascertain how many ballots for the Local 200 election were in the appropriate Post Office box. In addition to the thirty-three (33) ballots for Local Union 344 previously mentioned, there were 124 pieces of mail in the Local 200 box. There were black post-marks on most of these envelopes. Postal officials have confirmed that those post-marks indicate that the date on which each ballot was mailed by the voter, not the date of receipt at the West Allis Post Office. Thus, this date may not be used to ascertain whether the ballot was received by January 28, 1991, the date designated for the count.

There was also a red "date bump" stamp on the envelopes, which postal officials indicate was put on the envelopes by the West Allis Post Office. Sixty-five (65) of the ballots have a red bump date stamp of January 28, 1991, while fifty-two (52) have a red bump date stamp after that date. The remaining envelopes did not have a red date stamp, but all have a black post-mark date of January 28 or later, and thus may not be considered as timely received.

The conclusion of the Election Office investigation is that the sixty-five (65) ballots which have red date bump stamps of January 28, were received at the West Allis Post Office on or before January 28, 1991. Since postal officials indicated to Election Office Representative Daniel Koen at 1 30 p m that they had in the Local 200 box sixty-five ballots, and at the February 22 inspection of the Post Office box, there were sixty-five ballots with a red bump date stamp for January 28, it may reasonably be concluded that sixty-five (65) ballots that were not part of the count performed by the Election Office staff on January 28, 1991 were in fact received at the West Allis Post Office on or before that date.

The circumstances as related above make it impossible for the Election Officer to conclude that such ballots were not properly at the Post Office prior to the cut-off time on January 28, 1991. It may not be determined with precision whether those ballots were present at the West Allis Post Office in the box for Local 200 prior to 12 00 p m. on that date. Hence, the votes of the members casting these sixty-five ballots (65) must be deemed to be timely and thus should be counted, since the right to vote should be

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liberally construed Cf , In re Zeller, slip op at 5 (S D N Y November 1, 1990)
Given the vote margin between the candidates competing in the Local 200 delegate election, and particularly the three votes separating Messrs. Monty and Berczyk, it is clear that the sixty-five ballots here at issue may affect the results of the election. Thus, the provisions of Article XI, § 1 (b)(2) of the *Rules* which require that post-election protests only be considered and remedied if the alleged violation may have affected the outcome of the election have been met.

Accordingly, the protest filed by Mr Friesner with regard to the ballots at the Post Office on election day is hereby **GRANTED** The sixty-five (65) ballots with a red bump date stamp of January 28, 1991 will, at a designated time, in the presence of all observers and interested parties wishing to be present, be opened Their eligibility will be determined in the normal manner and those eligible ballots will be counted The additional counted ballots will be added to the existing tally of votes and the totals will be completed

If any person is not satisfied with this determination, he may request a hearing before the Administrator within twenty-four (24) hours of his receipt of this letter. Such request shall be made in writing and shall be served on Administrator Frederick B Lacey at LeBoeuf, Lamb, Leiby & MacRae, One Gateway Center, Newark, N J 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. 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

Very truly yours,


Michael H Holland

MHH/mca

cc: Frederick B Lacey, Independent Administrator
Barbara Z Quindel, Regional Coordinator