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VIA UPS OVERNIGHT

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Re: Election Office Case No. Post20-LU1145-NCE

Gentlemen.

Identical post-election protests were filed by Ronald J Hoxmeier, Thomas A Sawyer, James A Holte, Robert A Heilig, Vernon Pierskalla and Lorie Sehm. The protests are timely under Article XI, Section 1(b)(1)(a) of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules"). The protesters are members of Local Union 1145 and sought election as 1991 IBT International delegate and alternate delegates from that Local as members of the Democracy Slate. They claim that the *Rules* were violated by the Local 1145 members seeking election on the Ron Carey Slate in three respects. The Regional Coordinator conducted the investigation of these allegations.

The first claim is that the Ron Carey Slate members campaigned on employer owned property, both inside and outside, and on company bulletin boards, both during work and non-work time and in work and non-work areas. The claimants allege that they refrained from similar campaigning, thereby providing an unfair advantage to the Ron Carey Slate candidates.

The protesters were unable to present any evidence of campaigning on work time and the Election Officer investigation uncovered no such evidence. The complaint of the protesters is that members of the Ron Carey Slate campaigned at or in the facilities of employers employing Local 1145 members and used bulletin boards located at such facilities for campaign postings.¹ For instance, James A Holte, one of the protesters and the President of Local 1145, when asked to substantiate this protest, stated that the main problem related to the "improper" use of bulletin boards provided by the various employers for posting of official union notices or company/union material. He did not claim that the Democracy Slate was denied access to the bulletin boards. When asked if the Democracy Slate had ever attempted to have their campaign material placed on these bulletin boards, he responded that it had not because of his opinion that it would be illegal to do so. When asked whether material other than, or in addition to, official Company and Union notices had historically been posted on these bulletin boards, he responded that he was unaware of what had been on the boards, he was basing the protest on what should be on the boards.

The protesters in this case miscomprehend campaign rights afforded to all IBT members pursuant to the *Rules*. The *Rules*, as approved by the United States District Court for the Southern District of New York, provide in Article VIII, Section X(d) that "no restrictions shall be placed upon candidates or members pre-existing rights to use employer or Union bulletin boards for campaign publicity. Similarly no restrictions shall be placed upon candidates or member's 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." As the Election Officer's Advisory Regarding Political Rights, which was distributed to, *inter alia*, all IBT subordinate entities, directs all IBT members have the right to engage in campaign activities in non-work areas of their employer's premises during non-work times. All such members must be permitted to utilize general purpose bulletin boards, that is bulletin boards historically utilized for the posting of materials other than or in addition to official Company or Union notices, to post campaign materials. Further the Advisory requires that IBT

¹The factual allegation that the protesters had refrained from engaging in similar campaigns is disputed by members of the Ron Carey Slate. For instance, Gillian Furst, told the Election Officer that sample ballots and other Local 1145 Democracy Slate campaign materials had been posted on the bulletin boards at various employer facilities. She also stated that she saw an anti-Carey piece on such a bulletin board. She further asserted that during the campaign, she had stood beside Mr. Holte inside an employer's facility while he was handing out Democracy Slate literature. The Election Officer finds it unnecessary to resolve this factual dispute to resolve this protest.

members have a right to reasonable access to the premises of all employers, even employers by whom they are not employed, to engage in campaign activities.

Further, the Advisory explicitly states that these rights -- the right to engage in campaign activity in non-work areas during non-work times, the right to post on general purpose bulletin boards, and the right of access to the premises of employers other than then the member's own employer -- constitutes the bare minimum of the rights afforded to IBT members and candidates under Article VIII, Section 10(d) of the *Rules*. Where an employer has provided or agrees to provide more liberal and greater access than the minimum discussed in the Advisory, the prior practice prevails. As long as there is no discrimination between or among IBT members or candidates -- and none is alleged or found to have occurred in this case -- engaging in campaign activities on employer premises is not violative of, but in accord with, the *Rules*.

There is no allegation in the instant post-election protest that any of the protesters were prohibited from engaging in campaign activities in accordance with Article VIII, Section 10(d) of the *Rules*, or as further explicated in the Advisory regarding political rights. The protests state only that the protesters voluntarily refrained from engaging in such activity. That the protesters were aware that they had these rights is amply demonstrated by the resolution of the protest in Election Officer Case No P-270-LU1145-NCE. In that protest, a supporter of the Ron Carey Slate alleged that campaign materials for that slate had been removed from bulletin boards in employer premises throughout the Local, in violation of the *Rules*. That protest also alleged that an officer of Local Union 1145 had personally violated the *Rules* by removing Ron Carey slate literature from such a bulletin board. The protest was resolved by agreement of the Local to post a notice at all facilities where its members worked to apprise all parties of their continuing obligation to respect campaign postings. The notice was posted, it stated, inter alia, "Members are reminded that the rights of candidates to have their campaign literature posted on union bulletin boards has been guaranteed by an Order issued by the Federal Court."

The members of the Ron Carey Slate did not violate the *Rules* by taking advantage of the access to employer facilities to engage in campaign activities afforded them by the *Rules*, and as further discussed in the Election Officer's Advisory Regarding Political Rights. There is no allegation or evidence that members of the Democracy Slate were denied equal access by said employers. The members of the Democracy Slate voluntarily refrained from engaging in campaign activities in which they were entitled to engage under the *Rules*. This cannot and does not create a violation of the *Rules* on the part of those members of Local 1145 who acted under and in accordance with the *Rules* with respect to their campaign activities.

The second portion of the protest relates to the mailing of campaign literature by members of the Ron Carey Slate, who accomplished the mailing by utilizing membership lists provided them by accredited International General President candidate Ron Carey. This portion of the protest thus seeks to relitigate the matter previously decided by the Election Officer in Election Officer Case P-397-LU1145-NCE, and affirmed by the

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Independent Administrator, 91 Elec App 79 (SA)(February 27, 1991) The protesters in the two cases being substantially the same, that decision is res judicata on the issue.

The third portion of the protest alleges that the Election Officer's representative " . . . by failing to follow the established procedures for use of the electronic voting equipment, caused extensive rejection of voted ballots, equipment malfunctioning, and, serious and reasonable cause for doubts concerning the accuracy and validity of the final vote count " During the investigation, Mr Holte was asked by the Regional Coordinator, Barbara Z. Quindell, the Election Officer's representative at the election, for evidence in support of this allegation. He stated that the protest was based on the fact that a number of ballots needed to be reinserted (due to the way in which they had been folded in the ballot box), in the voting machine during the count

Apparently, during the count of the ballots in this election, a certain number of ballots were initially "rejected" by the electronic voting machine; the folds made in the ballots when they were placed in the ballot box by the voter had to be manually smoothed in order for the electronic voting machine to accept and count the ballot The electronic voting machine does not and cannot count or tally a ballot until and unless it accepts the ballot, rejected ballots do not have and cannot have any effect on the final tally. Further, the final tally for this election demonstrates that the votes counted by the electronic voting machine do not exceed the number of ballots cast by Local 1145 members. Given these facts, and when asked by the Election Officer, Mr Holte was not able to formulate a theory as to how the necessity of reinsertion of ballots previously rejected had any impact or effect upon the ballot count or tally.

Mr Holte further raised concern over the initial "shaking" of the electronic voting machine prior to the time that the count began Prior to the start of any count, the electronic voting machine must be adjusted based upon the width of the ballots to be counted In this case, the magnetic stick, which is utilized to properly adjust the electronic voting machine for ballot width, could not immediately be accessed; it was "floating around " The machine was "shaken" in order to retrieve the device.

After the "shaking," the machine was properly adjusted was and operational, and all election observers were shown the zero totals, demonstrating that no votes for any candidate had been recorded In compliance with Mr Holte's request, based upon his statement that some observers, unlike himself, were unfamiliar with the electronic voting device being utilized, five test ballots were run, and the ballots marked to demonstrate to all observers the methodology by which the machine operated and the counting was conducted.

No other allegations were raised by the protesters and the Election Officer has uncovered no evidence of any other issues or problems concerning the use or functioning of the electronic voting equipment All proper procedures were used and there was no equipment malfunctioning

In accordance with the foregoing, the Election Officer determines that the protests

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neither in whole or in part demonstrate that the *Rules* were violated with respect to the conduct of the 1991 IBT International Convention delegate and alternate election for Local Union 1145. On this basis the protests are **DENIED** in their entirety.

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

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cc. Frederick B. Lacey, Independent Administrator
Barbara Z. Quindell, Regional Coordinator