



OFFICE OF THE ELECTION OFFICER  
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March 12, 1991

**VIA UPS OVERNIGHT**

Ronald Newingham  
c/o Rank & File Slate  
3509 Tarawac Road  
Omaha, Nebraska 68147

Richard R Lescine  
4300 47th Street  
Sioux City, Iowa 51108

Dean Wells  
8626 Nicholas Street  
Omaha, Nebraska 68114

Jerry Younger  
Secretary-Treasurer  
c/o Blue Ribbon Slate  
IBT Local Union 554  
4349 South 90th Street  
Omaha, Nebraska 68127

Jim O'Connor  
3115 Locust Street  
Sioux City, Iowa 51106

**Re: Election Office Case No. Post26-LU554-MOI**

Gentlemen

A post-election protest was filed pursuant to Article XI, Section 1 of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules"), by Mr Ronald A Newingham Mr Newingham alleges that he and his Rank & File Slate were deprived of a fair and democratic election by virtue of the February 3, 1991 increase in postal rates Mr Newingham contends that this rate change caused ballots not to be returned in time for counting at the February 9, 1991 election count Specifically, Mr Newingham asserts that certain voting members had their envelopes returned to them for insufficient postage and could not re-mail their ballot before the deadline Other members who noted that the \$0 25 cent stamp affixed to the ballot envelope would be insufficient to post the letter declined to mail their ballots, they were unwilling to add the \$0 04 additional postage and/or believed that the postal authorities would not transmit the letter due to insufficient postage.

The election for six delegates to the 1991 IBT International Convention took place on February 7, 1991 There were two slates, the Blue Ribbon Slate, which included the incumbent Local 554 officers, and the Rank & File Slate, which included Mr Newingham, as well two independent candidates. A total of 1309 votes were cast and 1242 ballots were counted. All six members of the Blue Ribbon Slate were elected

The next six highest vote candidates were the members of the Rank & File Slate. The two independent candidates ranked thirteenth and fourteenth. The margin between the lowest-ranking winner (Clifford Williams - 611 votes) and the highest-ranking loser (Craig Martin - 440 votes) was 171.

The ballots for this election were mailed on January 21 and January 22, 1991, and were required to be returned prior to 12 00 noon, February 7, 1991. On the day after the postal increase went into effect, an Election Officer representative contacted the Omaha Post Office, to which ballots would be returned, and indicated that the Election Office would make up any deficiency caused by the rate increase at the time ballots were picked up on February 7, 1991. Postal officials assured the Election Officer representative that their practice was that mail with partial postage such as the ballots in question would be processed to the Omaha Postal Box Section at the receiving Post Office and would not, in the ordinary and established course of postal business, be returned to the sender for additional postage.

Likewise, when Election Officer representatives contacted the Omaha Postal Box Section on the day after the election, they were assured that no envelopes had been received at the Postal Box Section that lacked sufficient postage and that the Section did not return any of the ballot envelopes in question for lack of postage. The postal authorities indicated that because the mail in question was business mail, it would be extremely unlikely that a carrier or sorting station which received the envelope on its way to the Omaha Post Office would return it to the sender, business mail is considered by the Post Office as having a very high likelihood of being paid at the receiving end, and thus, is processed, even if only partial postage exists on the envelope.

With regard to the claim by Mr. Newingham that some members had noticed the \$0 25 stamp and simply refused to vote altogether, Mr. Newingham originally claimed to Regional Coordinator Michael D. Gordon that he believed that 700 members had not voted because of the increase. Mr. Gordon asked Mr. Newingham to provide any evidence that he could gather that members had indeed declined to vote because of the postage problem. Regional Coordinator Gordon made this request initially when the protest was first filed and reiterated it on three separate occasions between February 8, and February 14, 1991. Mr. Newingham was unable to provide any evidence of any member who did not mail in their ballots because of the postal rate change.

Mr. Newingham on February 14, 1991, indicated that one of his slate members, Jerry Fields, might be able to produce evidence on this issue. Mr. Gordon contacted Mr. Fields who told Mr. Gordon that he had spoken with approximately one hundred members about this issue. Mr. Fields stated that he had found no potential witnesses to substantiate the claim, other than one member who said that he had placed an additional \$0 04 stamp on his ballot envelope before mailing it.

The incumbent Secretary-Treasurer, Mr. Jerry Younger, indicated that members of his slate had surveyed the entire staff of the Sioux City, Lincoln Grand Island, and Omaha offices of the Local and had found that at no time did any one receive a

complaint or inquiry from any members about not receiving a ballot in a timely manner or raising the issue of the amount of postage on the return envelope. Mr. Younger also pointed out that in the last contested officer's election held in 1983, a total of 1216 voters cast ballots out of a membership of 5,012, which was 24.3% of the membership. In this instance, 1,309 ballots were cast out of a membership of 5,365, a 24.4% voter turnout.

Based upon the investigation of the Election Officer, it cannot reasonably be concluded that the postal rate change "affected the outcome of the election" as required under Article XI, Section 1 (b)(2) of the *Rules*. For a violation to have affected the results of the election, there must be a meaningful relationship between the violation and the results of the election. See Wirtz v. Local Union 410, 410A, 410B, & 410C, International Union of Operating Engineers, 366 F 2d 438 (2d Cir. 1966).

Since the postal increase occurred late in the voting, and voting patterns have indicated that most members who vote, vote shortly after receiving their ballot, it is unlikely that many members mailed their ballots after February 3, 1991. Additionally, if a member felt strongly about avoiding the four-cent increase, the envelope could have been mailed before February 3, 1991. It is clearly unlikely that many voters would have refused to vote because they believed themselves obligated to add a four-cent stamp. This is particularly true in the complete absence of any tangible evidence that the increased postal rates in any way affected the behavior of any voters. In view of the practices of the postal service, it is difficult to conclude that any significant number of envelopes were returned for insufficient postage. Moreover, the percentage of voters casting votes in this election is consistent with prior contested elections in the Local and in the Missouri & Iowa region. Additionally, even if one assumes, arguendo, that a few members were discouraged from voting after February 3, by the four-cent increase, or that some of the ballots were returned by the Post Office for insufficient postage and could not be remailed in time for the February 7, 1991 deadline, there is no showing that these problems affected one candidate more than another.

There is simply no evidence that the alleged problems generated by the postage increase had any effect on the election. This is particularly true when the margin of victory was 171 votes out of 1,242 ballots counted. The Election Office investigation revealed a complete absence of any tangible evidence that the increased postal rates in any material manner affected the results of the election as is required by Article XI, Section 1(b)(2) of the *Rules* for post-election protests.

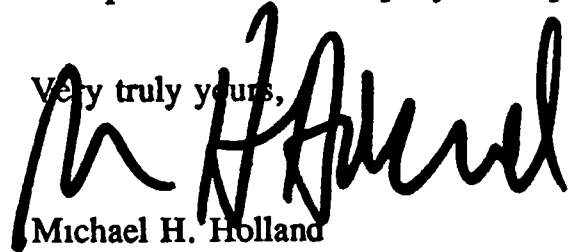
Accordingly, Mr. Newingham's protest regarding the effect of the increased postal rate is **DENIED**.

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

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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,

A handwritten signature in black ink, appearing to read "M. Holland", written over the typed name "Michael H. Holland".

Michael H. Holland

MHH/ads

cc Frederick B Lacey, Independent Administrator  
Michael D Gordon, Regional Coordinator