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March 6, 1991

VIA UPS OVERNIGHT

Archie L Long
1930 Ft Worth St
Grand Prairie, TX 75050

T C Stone
Secretary-Treasurer
IBT Local Union 745
1007 Jonelle Street
Dallas, TX 75217

Re: Election Office Case No. Post3-LU745-SOU

Gentlemen:

A post-election protest was filed by Mr Archie Long under Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules") In his protest, Mr Long lists five separate charges involving election day conduct of the T C Stone Slate Each of Mr Long's allegations will be reviewed in separately numbered sections below

I. Background and Election Results.

The IBT International Convention delegate and alternate delegate elections for Local 745 were conducted by the combined in-person, mail ballot method of voting on January 17 through January 19, 1991 The in-person polling was conducted at three locations for a total of three days ¹ Two thousand six hundred and ninety-nine (2,699) in-person votes were cast and three hundred sixty-three (363) absentee ballots were also

¹On January 17 and 18, 1991 from 7 00 am to 7 00 pm, and on January 19, 1991 from 7 00 am to 1 00 pm, in-person polling was conducted at the Local Union Hall at 1007 Jonelle Street, Dallas, Texas In-person polling was also conducted on January 17 from 6 00 am to 6 00 pm at the Stroh Can Plant on Fisher Road in Longview, Texas and on January 18, 1991 from 6 30 am to 5 00 pm at the Stroh Brewing Company on Cotton Street in Longview, Texas There was also a mail-ballot election for all members living in the El Paso area Those members were mailed ballots on December 17 and the ballots were due on the 19th of January by 12 00 noon

cast by those members living and working in the Longview and Dallas area One thousand one hundred seventy-six (1,176) mail ballots were cast by members living in the El Paso area.

Mr. Larry Daves, the Election Office Regional Coordinator, and Attorney Jacqueline Schoonhein supervised the election In addition, several Election Office Adjuncts staff and field personnel assisted Mr Daves and Ms. Schoonhein

Local 745 was to elect 11 delegates and 11 alternates to the 1991 IBT International Convention The ballot for the delegate election consisted of the "T C Stone" slate of 11 delegates and 11 alternates and 6 independent delegate candidates and 2 independent alternate delegate candidates. Mr. Long, the Complainant in the protest, was not himself a candidate The "T C. Stone" slate received the highest number of votes and won by a margin of 15 to 1 The tally results of the elections are as follows

DELEGATES

T C Stone Slate

| | |
|--------------------|------|
| T C Stone | 2455 |
| Tyson Johnson | 2396 |
| Jim Barlow | 2387 |
| Francisco Martiney | 2384 |
| Charters E Rogers | 2383 |
| Michael Kline | 2379 |
| Bill Baker | 2367 |
| Debra Haddock | 2365 |
| Joseph Brown | 2360 |
| Clarence Knowles | 2359 |
| Allen Stanford | 2356 |

Independent Candidates

| | |
|-----------------|-----|
| Don Ridenour | 161 |
| Roger Schlapp | 156 |
| Johnny Chappell | 154 |
| Eugene Ross | 152 |
| Donald Conley | 148 |
| Stephen A Lar | 139 |

ALTERNATE DELEGATES

T C Stone Slate

| | |
|------------------|------|
| Gilbert Regolado | 2343 |
| Charles Gardner | 2329 |
| Johnny Pompa | 2321 |
| Timothy Steele | 2320 |
| Leon Pennington | 2317 |
| Billy Knowles | 2316 |
| Hubert B Lamb | 2315 |
| Gil McClain | 2311 |
| Ronald Congleton | 2309 |
| Adrian Dunnivant | 2307 |
| Ira Ganious | 2303 |

Independent Candidates

| | |
|-----------------|-----|
| Frank Lepper | 141 |
| Edward Richison | 136 |

II. Rental of Vans.

The first allegation raised by Mr Long is that the vans used by the T C Stone Slate campaign to transport voters to the polls were paid for by the Local Union and not the T C. Stone Slate campaign Mr Long claims that the rental of the vans constituted an improper Union contribution in violation of the *Rules*.

Mr. Larry Daves, Regional Coordinator, conducted an investigation concerning the above allegation Pursuant to his investigation, Mr Daves interviewed Mr Long, who stated that he had no evidence to support his allegation that the vans had been supplied by Local 745 rather than the T C Stone slate campaign Mr Daves also interviewed Mr Stone, Local 745's Secretary-Treasurer and member of the T C Stone slate, concerning the renting of the shuttle vans² Mr Stone averred that the campaign had paid for the vans and denied that the Local Union had contributed to his campaign in any way In a January 28, 1991 letter from Mr Stone to Larry Daves, Mr Stone again stated that the vans had been furnished by the candidates of the T C Stone slate Mr Stone also submitted credit card receipts and copies of the van rental agreements, all of which substantiate Mr Stone's statement that the vans were paid for by the T C Stone Slate campaign The credit card receipts show that the credit card used to rent all of the vans belonged to Bill Baker, a member of the T C Stone Slate.

Since all the evidence submitted establishes that the vans were rented by the campaign and not by Local Union 745, and since Mr Long himself admits that he has no evidence to the contrary, I must reject Mr Long's allegations that the use of the shuttle vans by the T C Stone slate constituted an improper Union contribution Accordingly, Mr Long's protest concerning this issue is DENIED

III. The Wearing of Campaign Hats by Campaign Supporters in the Polling Site Areas.

Mr Long alleges that voters were wearing T C for V P hats inside the polling areas on election day in violation of Article XII of the *Rules* On February 6, 1991, pursuant to a telephone interview conducted by attorney Maureen Geraghty, Election Officer representative, Mr Long stated that he observed one individual entering the polling area wearing a "T C for V P " campaign hat Mr Long stated in that conversation that he did not see any other members wearing campaign hats within the polling area. Mr. Long does not allege that voters in any polling locations other than the Local Union Hall wore campaign hats, shirts or buttons or carried signs or engaged in any other type of campaigning inside the polling area Mr Long also does not allege that any members were actively campaigning within the voting area by distributing literature, or soliciting members as they came in to vote

²Mr Stone is also an accredited candidate for Regional Vice President from the Southern Conference

The investigation conducted by the Election Officer discloses the following facts At most two voters over a three-day period wore "T C for V P " hats into the voting booth at the polling site at the Local Union Hall Voters were not permitted to loiter in the voting area after casting their ballots. Once a member entered the polling site, an Election Officer representative checked the membership roster to determine whether the member was eligible to vote. The process of checking voter eligibility took approximately ten seconds Eligible voters were then immediately directed to the voting booths by an Election Officer representative. Once voters had completed marking the ballots, they were instructed to place the ballot in the ballot box and were then instructed to exit the building through the exit door.

The investigation further revealed that none of the candidate observers wore any buttons or hats or engaged in campaigning of any type inside the polling area Finally, all of the slate and independent candidates appointed individuals to act as observers at all of the polling sites for the entire three days None of the observers objected to the wearing of the "T C for V P." hats by the two members in the polling site In addition, there was no allegation, and the Election Officer's investigation affirmatively established that there was no other campaigning in, or within 100 feet of, the polling site

Article XII, § 1(j) of the *Rules* provides that "no one shall be permitted to campaign inside or within one hundred (100) feet of the entrance of any polling site " The wearing of the hats with the slogan "T C for V P " emblazoned across the front constituted a technical violation of this Rule However, the facts demonstrate that this technical violation did not affect the outcome of the election At most, but a few voters were in the polling place during the time that the members wearing the offending hats voted Assuming arguendo, that the hat wearers each influenced other voters, the overwhelming margin of victory between the lowest vote getter on the winning T C Stone slate and the losing independent candidate with the highest number of votes demonstrates that the violation had no reasonable likelihood of affecting the outcome

Post-election protests will only be considered and remedied if the violation may have affected the outcome of the election. *Rules*, Article XI, § 1 (b) Given the vote margin, there is no reasonable probability to conclude that the violation here may have affected the outcome of the election. Wirtz v. Operating Engineers, 366 F 2d 438, 62 LRRM (2nd Cir 1966) Accordingly, the above-described protest is DENIED

IV. The T.C. Stone Slate's Use of Sample Ballot Markings in Campaign Literature.

Mr Long also protests the fact that the T C Stone slate distributed campaign literature which contained instructions on how to mark the ballot Specifically, Mr Long protests the fact that the literature instructs the voters on how to fill in the arrow which points to T C Stone slate

The facts alleged in this protest are identical to a protest filed by Mr Long in (P-244-LU745-SOU). The Election Officer issued a decision denying the protest in that case on January 18, 1991 Mr Long did not file an appeal of that decision in

accordance with Article XI of the *Rules*. Therefore the Election Officer's decision is final and binding. Accordingly, the above described protest is dismissed

V. Use of the Campaign Vans to Transport Voters to the Polls.

Mr Long also alleges numerous violations with respect to the transportation of voters to the polls in the vans provided by the T C Stone Slate campaign. Specifically, Mr Long raises the following three claims: (1) the wearing of "T C. for V P " hats by the drivers of the vans intimidated members of Local 745 and undermined their rights to an open and honest election, (2) the drivers of the vans refused to transport Local 745 members who did not support the T.C Stone Slate candidates to the polls, (3) the agreement between various employers and the T.C Stone Slate allowing members to vote on work time if they travelled to the polls in the vans provided by the campaign constituted an improper contribution in violation of the *Rules*. Each of the three claims will be reviewed below in separately lettered sections

A. The Wearing of the "T.C. for V.P." Hats By the Van Operators.

As stated above, Mr Long claims that the wearing of campaign hats by the drivers intimidated Local 745 members in their exercise of their political rights. Mr. Long also claims that members were intimidated by the fact that the campaign signs declaring "T C For V P " were attached to some of the vans. Mr. Long submits no evidence in support of his allegation, nor did the investigation reveal any members who claimed that they were intimidated by the wearing of the campaign hats or the signs. The Election Officer investigation disclosed that the operators of at least two vans wore campaign hats which contained the "T C for V P." slogan. The investigation also disclosed that no members were denied the right to wear campaign buttons or other articles of apparel supporting opposition candidates while riding in the vans. Further, members have a right to wear campaign buttons and other campaign paraphernalia and to display campaign signs on vehicles. *Rules*, Article VIII, § 10, Advisory On Political Rights.

Since no members were coerced or intimidated by the wearing of the hats or the campaign signs and since the *Rules* clearly provide that members have the right to wear campaign hats and buttons and post campaign signs on vehicles, I must reject Mr Long's claim. Accordingly, his protest concerning the wearing of the campaign hats by drivers of the vans and the display of campaign signs on the vans is DENIED

B. The Alleged Refusal of the Van Drivers to Transport Non-T.C. Stone Supporters to the Polls.

Mr Long also alleges that some members of Local 745 who did not support Mr Stone's slate were not permitted to board or ride in the vans provided by the Stone campaign. In support of his allegations, Mr Long submitted the names of three Local 745 members whom he believed may have been refused rides on the vans. An Election Officer representative in the Washington, D C office, Maureen Geraghty, interviewed the three members, all of whom maintained that they had not been refused rides on the

van The investigation undertaken by the Election Officer failed to find any members who had been denied access to the vans Therefore, I conclude that there is no evidence to support Mr Long's claim Accordingly, Mr Long's protest with respect to this issue is DENIED

C. Agreement Between Local 745 and Its Employers that Provided Employees Could Vote During Work Shifts Only if they Rode in Vehicles Provided by T.C. Stone Campaign.

Mr Long also protests the fact that various employers employing Local 745 members restricted voting during work hours to those members who rode in the shuttle vans provided by Mr Stone's campaign Mr. Long claims that such a policy constituted an employer contribution in violation of Article VIII of the *Rules* The investigation disclosed that many employers employing members of Local 745 permitted members to vote on work time only if they rode to the polls in the vans provided by the campaign The employers stated that the rationale for this policy was due to the fact that if the members were permitted to go in their own vehicles, the employer would have no assurances that members would use the time to vote, or that members would in fact return to work Several employers stated, and the Election Officer investigation confirmed, that this procedure has been utilized in prior Local 745 elections where the procedure allowed opposition and incumbent slates to hire vans to transport members from worksites to the polls, so long as a candidate or group of candidates contacted the employer prior to the election. Mr Stone also confirmed the above facts Several members of Local 745, including some of the opposition delegates who ran against Mr. Stone's slate, also stated that they recalled that opposition candidates had transported members in previous elections

The Election Officer's investigation determined that the employer's consistent past practice was to permit any candidate or slate of candidates to transport members to the voting site Local 745 members, including some of the candidates who ran for delegate or alternate delegate positions in opposition to Mr Stone's slate, admitted that this policy was in effect in prior Local Union officer elections.

This practice has also been approved by the United States Department of Labor In 1984, a complaint was filed by a Local 745 member who contended that the employers' policy -- the same policy in effect for the delegate and alternate delegate election -- with respect to permitting members to vote on work time constituted an illegal employer campaign contribution violative of Section 401 (g) of the Labor Management Reporting and Disclosure Act, 29 USC § 481 (g)³ After finding that, other than campaign signs or buttons or similar paraphernalia, there was minimal campaigning during the trip to the polling site, the Department of Labor dismissed the complaint

³29 USC § 481 (g) and the regulations interpreting it, see 29CFR, are analogous to the prohibitions against employer contributions found in Article X, § 1 (b)(1) of the *Rules*

Similarly in this election, other than the few drivers who wore campaign hats and the campaign signs on the vans, there was no campaigning inside the vans. No members, regardless of their political position, were denied the right to ride in the vans. The voting was conducted in secret; riding in the vans did not determine one's vote. Further, all candidates could have provided the same service to members of these employers.

The margin of victory in this election was approximately 15 to 1. There was no discrimination between Local 745 members, all were permitted to ride in the vans regardless of electoral preferences. There was no discrimination among candidates; all were permitted to provide van service. Thus, even assuming that the employer policy here constituted a violation of Article X, § 1 (b) of the *Rules*, there is no showing of any meaningful relation between the violation and the election results. Usery v. Teamsters Local 639, 93 LRRM 2713 (District of Columbia Circuit Court of Appeals, 1976) (employer providing refreshments for a campaign rally which the employer permitted to be held on work time). Without such relationships, there is no reasonable probability to conclude that the violation may have affected the outcome of the election. Wirtz v. Operating Engineers, *supra*.

Only violations which may have affected the outcome of the election are to be remedied post-election. *Rules*, Article XI, § 1 (b)(2). Accordingly, this claim must be DENIED.

VI. Conclusion.

The Election Officer finds that three of Mr. Long's protests do not constitute violations of the *Rules*. Of the remaining two protests, the Election Officer finds that even assuming that the *Rules* were violated, neither violation provided a basis for concluding that the results of the election may have been affected. The Election Officer further finds that the cumulative effect of the purported violations is also insufficient to raise any reasonable probability that the outcome of the election was affected. Accordingly, Mr. Long's protest is DENIED in all respects.

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,

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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/mca

cc Frederick B Lacey, Independent Administrator
Larry R Daves, Regional Coordinator