

OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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Michael H Holland
Election Officer

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April 3, 1991

VIA UPS OVERNIGHT

Richard H Michaud
c/o Union Slate
796S Sunkist Blvd N.
Brooklyn Park, MN 55444

Curtis S Kummula
Secretary-Treasurer
IBT Local Union 471
3001 University Ave , NE
Minneapolis, MN 55414

Lester Redning
c/o The Slate
4047 Girard Ave , N.
Minneapolis, MN 55412

Nelson L J Braun
8489 Heron Ave. S.
Cottage Grove, MN 55016

Re: Election Office Case No. Post33-LU471-NCE

Gentlemen

A post-election protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Richard H. Michaud asserting that a leaflet distributed by an opposing slate was slanderous and adversely affected the outcome of the election. A separate post-election protest was filed pursuant to the *Rules* by Nelson L J Braun claiming that the Election Office Adjunct Coordinator had improperly handled the ballots at the election count by remarking ballots to implement the intent of the voter if the voter had not used a marking implement that could be tabulated by the voting machine and, Mr Braun contends that such ballots requiring remarking by the Adjunct Coordinator should have been treated as challenged ballots.

The counting of ballots in the election for Local 471 took place on February 27, 1991. There were two opposing slates, the Union Slate, headed by Mr Michaud, and The Slate, headed by Lester Redning, as well as one independent candidate for delegate and one independent candidate for alternate delegate. The election was to select two delegates and one alternate for the IBT Convention. 624 ballots were cast, of which 598

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were counted. All of the members of The Slate, including Lester Redning, won and none of the members of the Union Slate, including Mr Michaud, was victorious. The lowest ranking winning candidate for delegate was Bob Storms, with 332 votes, while the highest ranking loser was Gary Heinzmann of the Union Slate with 263 votes. Thus, the margin for the delegate race was 69 votes. In the race for alternate delegate, Wayne Ruth, of The Slate, received 330 votes, while Mr. Bruce Goettman, of the Union Slate, received 246 votes. Thus, the margin for the alternate delegate race was 84 votes.

With regard to the allegedly slanderous literature, Mr. Michaud claims that a leaflet entitled, "Which Is The True Union Slate?" was posted on bulletin boards by the opposition slate and that the statements made therein were untruthful and libelous.

The document in question was distributed as campaign literature. There is no allegation that this literature was created or disseminated with the use of Union goods or funds in violation of Article X, § 1 (b)(3) of the *Rules*. The fact that the assertions contained in the questioned campaign literature are allegedly slanderous or false does not mean that its circulation violates the *Rules*. See National Association of Letter Carriers v. Austin, 418 U.S. 264 (1974) (uninhibited and robust debate encouraged in labor matters, even allegedly defamatory statements permitted); Salzhandler v. Caputo, 316 F.2d 445 (2nd Cir. 1963) (statements critical of Union officials, even if incorrect, protected). The policy of encouraging robust and uninhibited debate in the selection of delegates and alternate delegates to the IBT International Convention is reflected in the *Rules*, Article VIII, § 6 (g), which prohibits the censorship of campaign literature

Accordingly, the above described protest of Mr Michaud is DENIED.

The next protest, filed by Nelson Braun, concerns the conduct of the Adjunct Coordinator during the actual counting of ballots on February 26, 1991. Mr. Braun complained that some ballots were not marked with a number 2 pencil, as the ballot itself indicated should be done, but rather were marked with a pen. Other ballots contained marks other than the completion of the arrow on the ballot -- as the ballot instructed should be the method of voting -- such as with a check or an "x". Mr. Braun contends that such ballots should have been challenged and not counted since they were improperly marked.

The counting of the ballots at Local Union 471 was conducted by Adjunct Coordinator Marilyn Taylor. Adjunct Coordinator Taylor explained to all observers prior to the machine count of the ballots the procedure that would be used for remarking ballots which had been marked with other than a number 2 pencil or with markings other than the completion of the line. Her explanation was that so long as the clear intent of the voter could be ascertained, the ballot would be remarked so as to implement the intent of the voter, but that the ballot would be shown to observers in this process so that they could indicate any individualized protest that they might have with regard to her intended remarking of the ballot. At the time that this procedure was explained, Mr. Braun, an observer for Mr Michaud's slate, voiced a protest with regard to the overall method. Adjunct Coordinator Taylor indicated that she would use this procedure, a

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procedure consistent with the practice of the Election Office nationwide, but that Mr Braun or any other observer could contest the actual marking of any individual ballot

As the ballots were reviewed during the count process, Adjunct Coordinator Taylor implemented the aforementioned policy. When ballots had to be remarked because of the use of a pen, light marking, checks or "x"s rather than connecting the line, or any other such matter, the ballot was shown to the observers so that they could indicate if they disagreed with her determination regarding the clear intent of the voter. No particularized disputes regarding the actual intent of any voter were made by any observer. Consequently, the actual intent of the voters in question was carried out.

The protest by Mr. Braun revolves around the question of whether the marking of the ballot in some fashion which was technically inconsistent with the instructions on the ballot necessitates the disenfranchisement of that voter because of that technical defect. The purpose of the *Rules* is to provide open and honest elections in which the desires of the membership are reflected in the outcome of the election. It would be inconsistent with this fundamental democratic purpose for voters to be disenfranchised simply because they did not use a number 2 pencil or because they placed a check on the ballot rather than connecting an arrow. It is of significant note that none of the observers in this election voiced any opposition to the actual marking of any particular ballot with regard to the intent of that voter.

Accordingly, the protest of Mr Braun with regard to the marking of the ballots at the time of the count is DENIED.

Article XI, § 1 (b)(2) of the *Rules* provides that "Post-election protests shall only be considered and remedied if the alleged violation may have affected the outcome of the election." For a violation to have affected the results of the election, there must be a meaningful relation between a violation and the results of the election. See Wirtz v. Local Unions 410, 410(A), 410(B) & 410(C), International Union of Operating Engineers, 366 F 2d 438 (2nd Cir 1966). As noted, no violations have been found with regard to the above-described protests. Consequently, there being no violations, the outcome of the election could not have been affected by the conduct alleged.

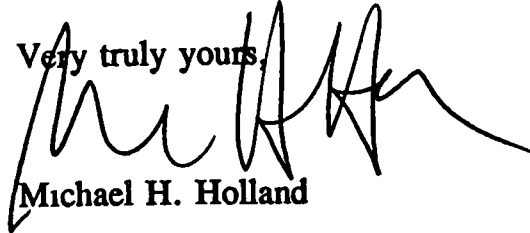
Accordingly, the post-election protests of Mr Michaud and Mr Braun are hereby DENIED.

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 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,

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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 "Michael H. Holland". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael H. Holland

MHH/mca

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