

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

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May 15, 1991

**VIA UPS OVERNIGHT**

Barry L. Clark  
5893 Crescent Ave.  
Buena Park, CA 90620

Richard D. Martino  
Secretary-Treasurer  
Teamsters Local 420  
1221 N. Peck Rd.  
S. El Monte, CA 91733

John Conaway  
13577 Simshaw Ave.  
Sylmar, CA 91342

Pete Gallegos  
10508 Poinciana  
Whittier, CA 90606

Steve Blaco  
1163 7th Street  
Hermosa, CA 90254

Horace Miranda  
1017 W. 7th Street  
Upland, CA 91786

**Re: Election Officer Case Nos: Post-69-LU420-CLA  
P-677-LU420-CLA  
P-749-LU420-CLA  
P-750-LU420-CLA**

Gentlemen:

This matter concerns a pre-election protest (P-677-LU420-CLA), a post-election protest (Post-69-LU420-CLA) and two protests filed subsequent to the election concerning events occurring after the election (P-749-LU420-CLA and P-750-LU420-CLA) all filed pursuant to Article XI §1 of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*"). Protests assigned Election Office Case Nos. P-677-LU420-CLA, Post-69-LU420-CLA and P-749-LU420-CLA were filed by Barry Clark, a candidate for delegate to the IBT International Convention from Local 420. The protest assigned Election Office Case No. P-750-LU420-CLA was filed by Horace Miranda, a candidate for delegate to the IBT International Convention from Local 420. All the above referenced protests alleged violations of the *Rules* occurring both prior to and after the Local 420 delegate election by Local Union officers who were also candidates for delegate to the IBT International Convention from Local 420.

Local 420 held its election for delegate and alternate delegate to the IBT International Convention exclusively by mail ballot. The Local was to elect four delegates and three alternate delegates. There were twelve candidates for delegate, each of whom were affiliated with one of three slates as described below. There were four candidates for alternate delegate, three of whom were affiliated with one slate and the remaining candidate affiliated with another slate. The ballots were counted on March 25, 1991. The tally of the ballots was as follows:

<u>DELEGATES</u>	<u>VOTES</u>
<i>Richard "Dick" Martino Executive Board Slate</i>	
Richard Martino	325
John Conaway	321
Pete Gallegos	286
Steve Blaco	264
<i>420 Delegate Committee for Rank and File Slate</i>	
Barry Clark	215
Clyde Craig	213
Ralph Yager	212
Joe DeCroix	199
<i>Hoss Miranda/Henry Morales Slate</i>	
Horace Miranda	165
Garret Riddle	136
Henry Morales	125
Mike Olinger	112
<u>ALTERNATE DELEGATES</u>	<u>VOTES</u>
<i>Richard "Dick" Martino Executive Board Slate</i>	
Karen Cotter	317
Mike Glaser	366
Allen Shaw	336
<i>420 Delegate Committee for Rank and File Slate</i>	
Samuel Littlejohn	287

Thus, the successful delegate candidates were all affiliated with the Richard "Dick" Martino Executive Board Slate (after herein referred to as the "Martino Slate") with the highest ranked unsuccessful candidate, Barry Clark, a member of the 420 Delegate Committee for Rank and File Slate (after herein referred to as "Rank and File Slate") receiving 49 votes less than the fourth ranked delegate candidate. The margin between the third ranked alternate delegate candidate, the first three ranked alternate delegate candidates all being members of the Martino Slate, and the fourth ranked delegate candidate, Samuel Littlejohn, a member of the Rank and File Slate, was also 49 votes.

In the protest identified as Election Office Case No. P-677-LU420-CLA, Mr. Clark alleged that officers of the Local Union, specifically Richard Martino, Secretary-Treasurer, Pete Gallegos, President, and John Conaway, Recording Secretary, all candidates for delegate on the Martino Slate, visited work locations of Local 420 members for the purpose of campaigning while being paid by the Local Union. Mr. Clark further alleged that these officers were going out in teams so that one officer could appear to be conducting union business while the other officer was campaigning.

On March 26, 1991, the Election Officer issued a determination denying the protest essentially due to the inability of Mr. Clark to provide any specific facts to support the protest which were amenable to investigation. By a letter dated March 27, 1991, Mr. Clark requested that the Election Officer reopen Election Officer Case No. P-677-LU420-CLA on the basis of further specific evidence adduced by Mr. Clark in support of the allegations of his protest. The Election Officer granted Mr. Clark's request and reopened the case for further investigation by letter dated March 28, 1991.

Prior to the conclusion of the additional investigation, Mr. Clark filed a post-election protest (Election Officer Case No. Post-69-LU420-CLA). In his post-election protest Mr. Clark alleges that the investigation of the protest discussed above (Election Office Case No. P-677-LU420-CLA) was not done properly, contending that the Adjunct Regional Coordinator who conducted the investigation, Mr. Ray Cordova, intimidated witnesses. Mr. Clark argued that Mr. Cordova should not have the responsibility of conducting investigations for the Election Officer. Thus Mr. Clark alleged that an earlier pre-election protest which he had filed, Election Office Case No. P-599-LU420-CLA, which was investigated by Mr. Cordova and denied by the Election Officer should be reopened, reinvestigated and a new decision issued.

In addition to that allegation concerning Mr. Cordova in his investigations, Mr. Clark also contended that Mr. Cordova's integrity was suspect and thus all matters in which he had participated were tainted. Mr. Clark bases these contentions on the allegations set forth in the post-election protest filed by Raoul Rodriguez, a member of Local 630 (Election Officer Case No. Post-59-LU630-CLA).

The allegations set forth by Mr. Clark in Election Officer Case No. P-749-LU420-CLA and by Mr. Miranda in Election Officer Case No. P-750-LU420-CLA are similar. Both protests allege that after the election, Mr. Martino utilized union funds for the purpose of campaigning by including in the Local Union newsletter a paragraph concerning the use of the Western Conference of Teamsters logo on campaign literature. This issue of the propriety of the use of the logo had previously been decided in Election Officer Case Nos. P-541-LU420-CLA and P-685-LU420-CLA.

Based upon the allegations as contained in the protests discussed above and notwithstanding The Election Officer's faith in Mr. Cordova's integrity and impropriety, to avoid any possible appearance of the Election Officer assigned Bruce Boyens, Regional Coordinator of the Rocky Mountain Region to investigate all the then pending protests arising out of Local 420. Mr. Boyens was assisted in the investigation by

site. All stated that Mr. Martino would initiate a conversation with them and then direct the discussion toward the delegate election. Mr. Martino would then comment on his experience, the inexperience of his opponents and suggest to the members that they should vote for experience. Each of the members interviewed stated that it was their perception that Mr. Martino was soliciting their vote and was at the job site for that purpose only. In addition, one of the members interviewed observed Mr. Martino posting campaign literature at the worksite; another member was given campaign material by Mr. Martino.

Mr. Martino stated to Regional Coordinator Boyens that he regularly visits worksites for a variety of reasons. Customarily he visits five to ten worksites per month. He claimed that he was accompanied by another business agent at least fifty percent of the time. Mr. Martino states that after the nominations meeting, he personally participated in posting the nominations results on Local Union bulletin boards at worksites. He states that the posting took eight (8) working days. He and Local Union President Pete Gallegos visited 25 to 30 sites per day, or 200-230 worksites in all, in Orange and Los Angeles counties. Mr. Martino further acknowledges that he and Mr. Gallegos may have talked to members about various Union-related problems while on the site; however he states that he only talked to members about the election after the member had initiated the conversation on that subject.

Based upon the investigation conducted and the statements of all witnesses, including Mr. Martino, the Election Officer determines that Mr. Martino violated Article VIII §10 (b) of the *Rules*<sup>1</sup>. In so determining, the Election Officer credits the testimony of the members who indicated that Mr. Martino initiated conversation concerning the election and sought support for his slate from these members. Although the posting of the nominations results is indeed official union business, the Election Officer determines that Mr. Martino's decision to personally post the results of the nominations meeting, instead of mailing the documents to stewards for posting or sending others to accomplish the posting, was to provide himself with a colorable basis for campaigning on Union paid time. He initiated and engaged in conversations about the election with members who were present at the worksites and personally urged the members to support him. The purpose of the visits was for campaigning and thus the campaigning was not incidental to Union business. According, the protest in Election Officer Case No. P-677-LU420-CLA is GRANTED.

As noted above however, the delegate election for Local 420 was completed as of March 27, 1991. Thus, the issue becomes whether the violation as found above may have affected the outcome of the election as alleged in the post-election protest filed by Mr. Clark in Election Office Case No. Post-69-LU420-CLA.

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<sup>1</sup>No evidence was presented to show that any officer other than Mr. Martino campaigned during these site visits.

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." Thus, a violation of the *Rules* alone is not grounds for setting aside an election unless there is a reasonable probability that the outcome of the election may have been affected by the violation. See Wirtz v. Local Unions 410, 410(A), 410(B) & 410(C), International Union of Operating Engineers, 366 F.2d 438 (2nd Cir. 1966). To determine whether an affect exists, the Election Officer determines mathematically whether the affect was sufficient in scope to affect the outcome of the election and/or whether there was a causal connection between the violation and the result or outcome of the election. Dole v. Mailhandlers, Local 317, 132 LRRM 2299 (D.C.M.D. Alabama 1989). Since the Election Officer has determined above that the *Rules* have been violated, the issue then becomes whether said violation affects the outcome of the election.

The Election Officer does not find that it is probable that the campaigning done by Mr. Martino on Union time may have affected the outcome of the election. All candidates, particularly Mr. Clark, actively campaigned among the membership and had campaign literature posted at worksite bulletin boards. Further, both the Rank and File Slate and the Hoss Miranda Slate completed at least one campaign mailing to the entire membership.

All candidates had access to the membership and campaigned actively among the membership both by mail and by personal contact. Although Mr. Miranda gained some advantage by being paid by the Union for the time he spent campaigning, that advantage was merely a monetary advantage which the Election officer will remedy as set forth below. There is no allegation and no evidence that Mr. Martino had enhanced access to the membership for campaign activities or access beyond that afforded other candidates. Mr. Martino's violation was not with respect to his campaign activities, but relates to the fact that he was paid by the Union while engaging in such activities. If Mr. Martino had used vacation time or obtained a leave of absence from the Union, there would have been no violation. Further, there is no evidence to suggest that Mr. Martin's campaigning was misunderstood by members because it occurred on time paid for by the Local Union. All members interviewed freely acknowledged that they recognized Mr. Martino's comments as campaigning; they knew he was not conducting official Union business or stating an official Union position.

The only advantage obtained by Mr. Martino was the pay he received while campaigning. That advantage, while a clear violation of the *Rules*, did not enable him to campaign more or to gain greater access to the membership for campaign purposes. Thus, it cannot reasonably be concluded that this advantage may have affected the election outcome. Accordingly, the post-election protest is DENIED.

This does not mean, however, that the protest, wherein a serious violation of the *Rules* has been found by the Election Officer should not be remedied. As discussed above, Mr. Martino did campaign on Union time which is strictly prohibited by the

*Rules*<sup>2</sup>. To remedy his use of union paid time for campaign purposes, Mr. Martino is hereby directed to reimburse the Local for the salary, benefits and expenses he received during the eight day period during which Mr. Martino admits that he visited over 200 worksites and during which time the Election Officer finds he engaged in campaign activities. Mr. Martino shall file an affidavit with the Election Officer within five days of this decision delineating the amount of his salary and benefits and reimbursed expenses for this eight day period. Such affidavit shall also demonstrate Mr. Martino's compliance with the requirement of reimbursement, and affix evidenced such reimbursement.

## II. P-749-LU420-CLA and P-750-LU420-CLA

These two protest allege that Mr. Martino, through a Secretary-Treasurer's report, contained in the Local's newsletter and issued after the delegate election, violated the election *Rules*, specifically Article VIII §10 (c) which provides that Union funds, facilities, equipment, stationary may not be used to assist in campaigning unless a candidate reimburses the Union for such costs and goods. Mr. Clark contends that the Secretary-Treasurer's report which was mailed by the Union and was printed on official Union stationary constitutes post-election campaigning in violation of the *Rules*. Mr. Miranda contends that due to the pendency of the protests filed by Mr. Clark, Mr. Martino should not have published an article concerning the outcome of the delegate election.

The Secretary-Treasurer's report, which is a report by Richard Martino, published and distributed with local union funds, states in relevant part as follows:

During the delegates election, the Rank and File Delegates Slate used the Western Conference of Teamsters logo on their literature without the permission of the Western Conference of Teamsters in order to mislead the members into believing that the Western Conference of Teamsters endorsed their slate. This only reveals their lack of integrity and credibility to the members they deceived. Permission was never granted to them by the Western Conference of Teamsters.

These statements in the Secretary-Treasurer's report refer to campaign materials distributed by the Rank and File Slate which contained the Western Conference of Teamsters logo. The use of said logo was the subject of a protest filed by John Conaway, a member of IBT Local 420 and a candidate for delegate on the Martino Slate (Election Office Case No. P-541-LU420-CLA) as well as a protest by Horace Miranda, a member of IBT Local 420 and a candidate for delegate on the Hoss Miranda Slate (Election Officer Case No. P-685-LU420-CLA). These protests were denied by the Election Officer.

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<sup>2</sup>No witnesses interviewed stated that either Mr. Gallegos or Mr. Conaway engaged in any campaign discussion.

The Election Officer determined that the use of official Union insignia on materials that are obviously campaign literature is not prohibited by the Rules. The Election Officers's conclusion was based on the fact that use of an official logo on material which is clearly campaign material is unlikely to confuse or deceive any Union member and is a common practice during elections involving the IBT as well as other labor organizations. Since the literature in question was clearly campaign material there was no violation of the *Rules*. The determination of the Election Officer in Election Office Case No. P-541-LU420-CLA was affirmed by the Independent Administrator in 91-Elec. App.-87; no appeal was taken from the decision in Election Office Case No. P-685-LU420-CLA.

During the course of the investigation of these pending protests Mr. Martino stated that the remarks contained in the newsletter were true and were included in the newsletter because certain members of the Local were confused by the use of the logo. The Election Officer finds, however, that the statement contained in the newsletter is itself deceptive in that it implies that the use of the logo was wrongful and misled the members. The Election Officer had issued two prior decisions finding that the use of the logo was not misleading or wrongful.

None of these comments could have affected the outcome of the election since the newsletter was issued after the election had been concluded. However, the Election Officer cannot condone the use of Union funds and the Union newsletter to suggest to members that improprieties had been committed by candidates where the Election Officer has previously found that no improper acts had occurred. Thus, the Election Officer directs that Mr. Martino print the following as the first item in the Secretary-Treasurer's report in the next newsletter printed by the Local:

In my report contained in the April, 1991, newsletter I stated that the Rank and File Delegate Slate used the Western Conference of Teamsters logo on their campaign literature in order to mislead the members into believing that the Western Conference of Teamsters endorsed their slate. I also stated that this revealed their lack of integrity and credibility to the members they deceived. I wish to correct those statements by stating that the Election Officer appointed by the United States District Court for the Southern District of New York determined in Election Office Case No. P-541-LU420-CLA, which determination was upheld by Independent Administrator Frederick B. Lacey also appointed by the United States District Court for the Southern District of New York, as well as in Election Office Case No. P-685-LU420-CLA that the use of the logo of the Western Conference by the Rank and File Slate was not misleading. The Election Officer further found that the use of the logo did not violate the Election Rules as promulgated by the Election Officer and approved by the United States District Court and the Court

Barry Clark  
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of Appeals for the Second Circuit.

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

MHH/cdk

cc: Frederick B. Lacey, Independent Administrator  
Geraldine Leshin, Regional Coordinator



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% INTL NATIONAL BROTHERHOOD OF TEAMSTERS  
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May 16, 1991

**VIA UPS OVERNIGHT**

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Re: Election Officer Case Nos: Post-69-LU420-CLA  
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P-749-LU420-CLA  
P-750-LU420-CLA

**. ERRATA**

Gentlemen:

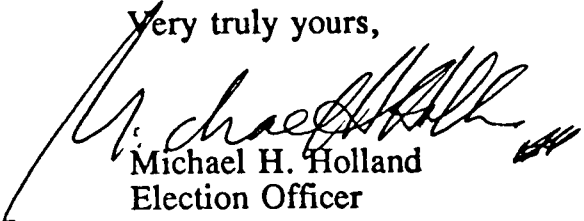
Two errors appear in the Election Officers May 15, 1991 decision in the above entitled cases. On page two of the decision Karen Cotter is improperly attributed with having received 317 votes; this was a typographical error and she received 371 votes.

Barry L. Clark  
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Further, the first sentence of the last paragraph on page three of the decision should read as follows:

Based upon the allegations as contained in the protests discussed above and notwithstanding the Election Officer's faith in Mr. Cordova's integrity and impartiality, to avoid any possible appearance of impropriety, the Election Officer assigned Bruce Boyens, Regional Coordinator of the Rocky Mountain Region to investigate all the then pending protests arising out of Local 420.

Very truly yours,



Michael H. Holland  
Election Officer

MHH/cdk

IN RE:

BARRY L. CLARK

and

RICHARD MARTINO

and

IBT LOCAL UNION NO. 420

91 - Elec. App. - 152 (SA)

DECISION OF THE  
INDEPENDENT  
ADMINISTRATOR

This matter arises out of an appeal from a decision of the Election Officer in Case Nos. P-677-LU420-CLA, Post-69-LU420-CLA, P-749-LU420-CLA and [REDACTED]. A hearing was held before me by way of telephone conference on May 22, 1991, at which the following persons were heard: Barry Clark, Clyde Craig and Horace Miranda, on behalf of the complainants; Richard Martino, on behalf of Local 420; Bruce Boyens and Geraldine Leshin, the Regional Coordinators; and John J. Sullivan and Barbara Hillman, on behalf of the Election Officer.

The background concerning Local 420's election is found in the Election Officer's Summary:

Local Union No. 420 held its election for four delegates and three alternate delegates to the 1991 Convention by mail ballot. Three slates appeared on the ballot, including the "Richard 'Dick' Martino Executive Board Slate" headed by the incumbent Secretary-Treasurer, Richard Martino (hereinafter the "Martino Slate"), and the "420 Delegate Committee for Rank and File Slate," headed by protester Barry Clark.

This only reveals their lack of integrity and credibility to the members they deceived. Permission was never granted to them by the Western Conference of Teamsters.

Article VIII, Section 10.(c). of the Election Rules prohibits the use of Union stationery, resources or funds to assist in campaigning. Although this statement was published at the conclusion of the delegate election, it is clearly campaign material relating back to the delegate election. As such, I agree with the Election Officer's conclusion that it violates the proscriptions of Article VIII, Section 10.(c).

Mr. Martino's breach of the Election Rules in this regard is all the more egregious given the fact that the use of the Western Conference of Teamsters logo on Mr. Clark's campaign material had been the subject of two earlier protests. One of those protests was filed by a member of Mr. Martino's slate. In those protests, the Election Officer determined that the use of the logo on material that is obviously campaign literature does not violate the Election Rules. The Election Officer specifically found that the appearance of the logo on campaign material was not likely to confuse or deceive members into believing that the campaign literature was endorsed or approved by the Western Conference of Teamsters. As explained in the Election Officer's Summary:

Despite these findings, Mr. Martino included in his Secretary-Treasurer's report an express statement that the logo was used "in order to mislead the members." He further maligned the integrity and credibility of the Rank and File candidates on the basis of their use of the logo. However, the Election Officer specifically found that such use was common practice in IBT elections and did not constitute wrong-doing.

The Election Officer recognized that because Mr. Martino's statement was published after the election, it cannot be said that it affected the outcome of the election. Thus, a rerun of the election clearly was not warranted. See Election Rules, Article XI, Section 1.b.(2).

The Election Officer, however, found that some remedy was warranted given the nature of the violation. Accordingly, the Election Officer directed Mr. Martino to publicize an appropriate retraction.

The Election Officer's treatment of this violation of the Election Rules is proper and is affirmed.

#### **WORKSITE LISTS**

The last issue raised in this appeal is the alleged dilatory response of the Local in supplying Mr. Clark with worksite lists in alleged violation of Article VIII, Section 1.c. of the Election Rules. Mr. Clark contended that certain worksite information was omitted from the list supplied to him. The Election Officer's investigation revealed that information concerning 18 worksites were omitted from the list supplied by the Local. The Local provided Mr. Clark with a list containing information concerning 404 separate employers. The 18 employers whose worksites were omitted from the list reflects a small percentage of the total worksites supplied. Moreover, of the 18 worksites not supplied, the largest employer employed only eight members of Local 420, one

of whom was ineligible to participate as a voter in the Local 420 delegate and alternate delegate election.

In fact, the Election Officer's investigation revealed that of the 18 omitted worksites, only 54 eligible employees worked at those locations. As noted at the outset, Mr. Clark lost his bid for delegate by 49 votes. Mr. Littlejohn lost his bid for alternate by the same margin. Thus, assuming that 100 percent of the 54 eligible members voted, Mr. Clark and Mr. Littlejohn would have had to have garnered more than 90 percent of their votes.<sup>1</sup> The actual participation of Local 420 membership in this election was less than 27 percent (2,649 ballots mailed and 748 ballots cast, of which 65 were voided). Mr. Clark's 215 votes represents less than 32 percent of the valid ballots cast. Mr. Littlejohn's 287 votes represents just 42 percent of the valid ballots cast. Thus, it cannot reasonably be said that if Mr. Clark or Mr. Littlejohn were given the worksite information concerning these 18 employers that they would have been able to sway such a large percentage of the eligible members to vote in their favor. The fact that Messrs. Clark and Littlejohn had access to a list which

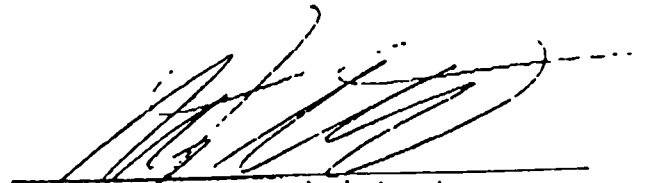
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<sup>1</sup> The Election Officer, in his Supplemental Summary, states it this way:

In order for the results of this election to have been affected, 92% of the 54 eligible members employed at the 18 worksites would have had to have voted in the Local 420 delegate and alternate delegate election. Of this 92%, 100% would have had to have voted for Mr. Clark and Samuel Littlejohn for the results of this election to have been different.

included 404 worksites cannot be ignored. Messrs. Clark and Littlejohn were unable to gain a winning percentage of the votes at those sites. Thus, there is no suggestion that anything would have been different at the 18 worksites which were omitted.

Accordingly, the decision of the Election Officer denying this portion of the protest is affirmed.



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Independent Administrator  
Frederick B. Lacey  
By: Stuart Alderoty, Designee

Dated: May 28, 1991