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November 14, 1991

**VIA UPS OVERNIGHT**

Robert W. Cleaton  
Business Agent  
IBT Local Union 579  
2214 Center Avenue  
Janesville, WI 53546-8999

John B. Wilson  
4304 Oldwyck Drive  
Janesville, WI 53546

Brendan F. Kaiser  
Secretary-Treasurer  
IBT Local Union 579  
2214 Center Avenue  
Janesville, WI 53546-8999

**Re: Election Office Case No. P-1033-LU579-NCE**

Gentlemen:

A protest was filed with the Election Office pursuant to Article XI of the Rules for the IBT International Union Delegate and Officer Election, revised August 1, 1991 by Robert W. Cleaton, a member and business agent of Local 579. In his protest, Mr. Cleaton alleges that his rights under the Rules were violated by John B. Wilson in an incident that occurred outside of the Local Union 579 hall while Mr. Cleaton was passing out R. V. Durham campaign literature.<sup>1</sup> The protest was investigated by Regional Coordinator Barbara Quindel. The Election Officer's investigation revealed the following.

Robert Cleaton is a member of Local Union 579 and a full-time business agent for the Local Union. Mr. Wilson is also a member of Local Union 579. On October 19, 1991, during the last portion or immediately after the Local's regular membership meeting, Mr. Cleaton was distributing campaign literature outside of the Local Union

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<sup>1</sup> In his response to Mr. Cleaton's protest, Mr. Wilson makes a series of allegations regarding Mr. Cleaton's alleged violations of the Rules. Both the Cleaton and Wilson allegations will be considered herein.

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hall.<sup>2</sup> Cleaton was wearing a "Vote for R. V. Durham" t-shirt and distributing literature on behalf of the R. V. Durham Unity Team.

While distributing literature, Cleaton got into a conversation with Wilson, who supports General President candidate Ron Carey, regarding the merits of their respective candidates. Cleaton made comments to the effect that Carey was a "scab" and that Carey testified in a criminal case under a grant of immunity. Wilson stated that Durham was corrupt, placed relatives on the Union payroll and received excessive salaries and pension benefits from the IBT. This campaign argument was not accompanied by any acts or threats of violence and lasted for approximately five minutes. Cleaton continued to distribute campaign literature after the conclusion of his exchange with Wilson. He distributed literature both before and after the five-minute exchange with Wilson for a total period of approximately 45 minutes.

Prior to his encounter with Cleaton, Wilson attended the Local Union membership meeting inside the Union hall. Both Cleaton and Local Union 579 Secretary-Treasurer Brendan F. Kaiser wore "Vote for R. V. Durham" t-shirts at the Local Union meeting. For his part, Wilson wore a Ron Carey button at the meeting.

Mr. Cleaton filed his protest on Local Union letterhead and used the Local Union fax machine to transmit information in support of his protest to the Election Officer. There has been no allegation that the Local Union discriminated against any other member with respect to the use of these resources for these purposes.

With respect to the threshold issue,<sup>3</sup> the incident involving Cleaton and Wilson outside of the Local Union hall, the Election Officer finds Mr. Cleaton's protest without merit. The allegations of both parties, taken as true, do not go beyond the normal campaign banter of a hard-fought election campaign. There was no violence or threat

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<sup>2</sup> It is unclear whether the sidewalk from which Cleaton was distributing the Durham campaign literature was public or Local Union property. However, if on Local Union property, there is no allegation that other IBT members were prohibited from engaging in similar campaign activity on that property.

<sup>3</sup> Wilson argues that the Cleaton protest was untimely because while the incident complained of occurred on October 19, 1991, Cleaton's protest was not filed until October 25, 1991. While Mr. Wilson maybe correct, the Election Officer, consistent with his usual practice concerning allegations of threats, intimidation and/or harassment, will consider that protest on the merits. The Election Officer notes that while Mr. Wilson contends that Mr. Cleaton's protest was untimely, the bulk of the allegation contained in his response, are also untimely. However, the Election Officer will also consider Mr. Wilson's claims on their merits.

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of violence or any form of intimidation in this exchange. Moreover, it appears that Cleaton's campaign activities were unaffected by his exchange with Wilson. See, e.g. In Re Patrick N. Clement, 91-Elec. App.-208 (S.A.).

Mr. Wilson's protests are similarly without merit. The wearing of campaign t-shirts at local union meetings is not violative of the Rules. Local Union officers, like any other Union member, whose freedom of political expression is protected by the Rules (see Article VIII, Section 10) may wear political t-shirts at Local Union meetings. Local Union officers, while conducting Union business with third parties who are not IBT members--e.g., employers, non-members, government agencies, etc.--may not wear campaign t-shirts because such expression would create the impression that the Local Union supports a particular candidate or slate of candidates. Participation in a Local Union meeting is not, however, conducting Union business with a third party. All members are entitled to wear buttons, t-shirts, hats or similar paraphernalia at Union meetings. Officers of the Local do not have lesser rights.

The use of Local Union stationery and the Local Union fax machine for the filing and processing of protests filed under the Rules is not violative of the Rules. In a similar case, In Re Kevin Lally, et al., 91-Elec. App.-36 (S.A.), the Election Officer held that the filing and processing of a protest is not conduct which supports the candidacy of an IBT member and therefore the use by an IBT member of an employer's fax was not a contribution prohibited by the Rules. In the instant case, Cleaton's use of the Local Union's stationery and fax machine to file his protest is not violative of the Rules, assuming, however, that such resources would be available to all Local Union members on a nondiscriminatory basis. There is no allegation or evidence that the Local Union's stationery and fax machine could not be used by all Local members for processing of protests.

Passing out campaign literature on the sidewalk outside of the Local Union hall is not violative of the Rules. There has been no allegation, and the Election Officer found no evidence, that other members of the Local Union were prohibited from passing out campaign literature at the same location.

For the foregoing reasons, the instant protest 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 be served on Independent Administrator Frederick B. Lacey at LeBoeuf, Lamb, Leiby & MacRae, One Gateway Center, Newark, New Jersey 07102-5311, Facsimile (201)