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December 27, 1990

VIA UPS OVERNIGHT

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Paul Brown
Rte. 2
Corinth, KY 41010

Michael Watson
2699 Leestown Road
Lexington, KY 40511

Re: Election Office Case No. P-142-LU651-SCE

Gentlemen:

Pre-election protests were filed under Article XI, §1 of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules"). The first protest challenges the eligibility of Richard Harris to be a candidate for delegate to the 1991 IBT International Convention on the following grounds:

(1) The written nomination and written second by which Mr. Harris was nominated had the typed word "alternate" crossed out and the handwritten word "delegate" inserted, while Mr. Harris' written acceptance, appearing on the same document as the written

nomination and second, did not have the typed word "alternate" crossed out;

(2) Donald Pennington, who nominated Mr. Harris in writing, was not prevented from attending the nominations meeting due to his work schedule, the reason given on his written nomination and therefore the written nomination was improper; and

(3) Mr. Harris was not prevented from attending the nominations meeting and therefore his written acceptance of nomination was improper.¹

The second protest challenges the eligibility of Paul Brown to be a candidate for delegate to the 1991 IBT International Convention on the grounds that Donald Pennington, who seconded the nomination of Mr. Brown in writing, was not prevented from attending the nominations meeting due to his work schedule, the reason stated on the written second. The second protest also challenges the eligibility of Mike Watson to be a candidate for alternate delegate to the 1991 IBT International Convention on the grounds that John Worsham, who seconded Mr. Watson's nomination in writing, was not prevented from attending the nominations meeting due to his work schedule, the reason stated on the written second.

I. Eligibility of Richard Harris

The Election Officer's investigation determined that the written nomination and the written second and written acceptance with respect to Mr. Harris was not consistent. The nomination, second and acceptance were all contained on a single typewritten page. The nominator and seconder crossed out the typewritten word "alternate" and inserted the handwritten word "delegate" while Mr. Harris, in his acceptance, did not do so. However, the Election Officer has confirmed that it was Mr. Harris' intent to accept nomination for the position of delegate. He inadvertently failed to cross out the typed word "alternate" in the acceptance portion of the document and substitute the word "delegate" when signing the acceptance. The inconsistency in the submissions with respect

¹This third contention with respect to Mr. Brown's eligibility was not placed in writing until December 17, 1990, as an alleged amendment to the earlier filed protest. Thus this part of the protest was not filed within forty-eight (48) hours after the December 14, 1990 nominations meeting and would be untimely under Article XI, §1(a)(1) of the Rules. However, the Election Officer is nonetheless resolving this portion of the protest also on its merits.

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to the nomination of Mr. Harris was inadvertent. The purpose of the Rules is to broaden, and not limit participation, in the nomination and election process. Thus the Election Officer will not invalidate Mr. Harris' nomination as delegate to the 1991 IBT International Convention on the basis of the inadvertent error on his written acceptance.

With respect to Mr. Harris' nominator, Donald R. Pennington, the Election Officer's investigation determined that Mr. Pennington, an employee of the United Parcel Service ("UPS") ceased work on Friday, December 14, 1990, the day of the nominations meeting, at 2:15 p.m. after having commenced work approximately eleven hours earlier, at 3:30 a.m. on December 14, 1990. After leaving UPS, he drove 54 miles to his home in Dry Ridge, Kentucky and, understandably, went to sleep. To attend the 7:00 p.m., December 14, 1990 nominations meeting, he would have to have driven 64 miles from his home to the Local Union hall in Lexington, Kentucky. Although Mr. Pennington was not required to return to his position with UPS until the following Monday, a member's work schedule as used in Article II, §3(f) includes not only the period that the member is on the job, but also periods where he would normally be sleeping. See in re: Richard Ward and Adrian Huff, 90-Elec. App.-60, Decision of the Independent Administrator, attached. Given Mr. Pennington's work schedule on Friday, December 14, 1990, he would "normally be sleeping" by 7:00 p.m. that night regardless of whether the next day was a work day or an off day for him. Therefore, Mr. Pennington was eligible to nominate Mr. Harris in writing. (See in re: Richard Ward and Adrian Huff, supra.)

The Rules provide in Article II, §3(h) that a "member must accept his/her nomination at the time made either in person, or, if absent, in writing." See also IBT Constitution, Article XXII, §4(a). Neither the Rules nor the IBT Constitution require that the member be unable to attend a nominations meeting in order to accept nomination in writing. Therefore, Mr. Harris' written acceptance of his nomination is proper under the Rules.

For the foregoing reasons, it is the Election Officer's determination that Richard Harris is eligible to be a candidate for delegate for the 1991 IBT International Convention and accordingly the protest with respect to Mr. Harris is DENIED in its entirety.

II. Eligibility of Paul Brown

The eligibility of Paul Brown to be a delegate to the 1991 IBT International Convention is challenged on the basis that his seconder, who seconded in writing, Donald Pennington, was not prevented from attending the nominations meeting in person. As the

discussion above with respect to Mr. Harris' eligibility demonstrates, Mr. Pennington's work schedule, properly interpreted, would have prevented him from attending the nominations meeting in writing. Therefore Mr. Pennington was eligible to second the nomination of Mr. Brown in writing. The Election Officer determines that Mr. Brown was properly nominated and seconded to be a candidate to the 1991 IBT International Convention and accordingly the protest with respect to his eligibility is DENIED.

III. Eligibility of Mike Watson

Mr. Watson's eligibility to be a candidate for alternate delegate to the 1991 IBT International Convention is challenged on the basis that his seconder, John Worsham, who seconded Mr. Watson's nomination in writing, was not prevented from attending the nominations meeting. The Election Officer's investigation determined that Mr. Worsham is employed by UPS. His work schedule for Friday, December 14, 1990, the day of the nominations meeting, was a regular day shift; he worked from 8:30 a.m. to 5:00 p.m. Mr. Worsham lives in Georgetown, Kentucky, approximately 11 miles from his UPS terminal and 20 miles from the Local Union hall where the nominations meeting was held.

Mr. Worsham worked a regular schedule on Friday, December 14, 1990. His work was on a day shift. His shift ended two hours prior to the commencement of the nominations meeting. A person working a normal eight hour day shift would not "normally be sleeping" at 7:00 p.m. in the evening. Therefore, Mr. Worsham was not prevented from attending the nominations meeting because of his work schedule. The Election Officer's investigation discovered no other basis which would have prevented Mr. Worsham from attending the nominations meeting.

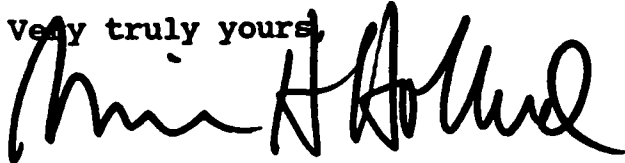
In accordance with the foregoing it is the Election Officer's determination that Mr. Worsham was ineligible to second a nomination in writing. Accordingly, inasmuch as Mr. Watson's nomination for alternate delegate was not properly seconded, Mr. Watson is not eligible to be a candidate for alternate delegate to the 1991 IBT International Convention and the protest is UPHeld.

If any person is not satisfied with this determination, he may request a hearing before the Administrator within twenty-four (24) hours of his receipt of this letter. Such request shall be made in writing and shall be served on Administrator Frederick B. Lacey at LeBoeuf, Lamb, Leiby & MacRae, One Gateway Center, Newark, N.J. 07102-5311, Facsimile (201) 622-6693. Copies of the request for hearing must be served on the parties listed above as well as upon

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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. 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.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael H. Holland". The signature is written in a cursive style with a large initial "M".

Michael H. Holland

MHH/BJH/sst

cc: Mr. Frederick B. Lacey
Peggy Hillman, Regional Coordinator