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February 15, 1991

VIA UPS OVERNIGHT

Al Szablak
4793 Creaser Rd.
Westmoreland, NY 13490

Victor C. Oliyadoti
President
IBT Local Union 182
5 Rutger Park
Utica, NY 13501

Terrance Majka
Secretary-Treasurer
IBT Local Union 182
5 Rutger Park
Utica, NY 13501

Re: Election Office Case No. P-154-LU182-PGH

Gentlemen

A pre-election protest was filed by Al Szablak pursuant to Article X, § 1 of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") By letter dated January 31, 1991, the Election Officer informed all interested parties that pursuant to his authority under Article XI, § 1(a)(4)(b) of the *Rules*, a determination on this protest would be deferred until after the Local 182 election and would be resolved in accordance with the procedure set forth in Article XI, § 1 (b) of the *Rules*

The election in Local 182 was completed on January 24, 1991 Five delegates and two alternate delegates were to be elected from that Local. There were six candidates for delegate including Mr Szablak The vote tally submitted to the Election Officer by the Regional Coordinator indicates that Mr. Szablak received 183 votes Mr Szablak was ranked number 6 of all candidates, the fifth ranked candidate, Anthony Debella, having received 764 votes.

The basis of the protest filed by Mr. Szablak concerns a remark allegedly made to him by Mr Terrance Majka in the presence of approximately 10 other Local 182 members. Mr Szablak advised the Regional Coordinator that on December 12, 1990, Mr. Majka was present at Mr. Szablak's place of employment in connection with some

grievance meetings. According to Mr Szablak, discussion was being held among the employee members and Mr. Majka concerning his meeting with management when Mr. Majka said, "If Al gets too far out of line I'll have to give him a good whack across his head."

The Regional Coordinator also spoke with Terrance Majka who stated that he did have a meeting on the date in question at the employer of Mr. Szablak. After the meeting, he went to speak to the members who were waiting to talk to him and shook hands with each member including Mr. Szablak. Mr. Majka reports that after shaking Mr Szablak's hand, Mr Szablak said "I thought you'd have a problem shaking my hand " Mr. Majka said that he responded, "If I had a problem with you, I'd whack you upside the head." Mr Majka further stated that the remark was a joke and some of the members present laughed and that Mr. Szablak smiled after the remark.

Many of the other members who were present were interviewed by the Regional Coordinator They all indicated that Mr. Majka did indicate to Mr Szablak words to the effect that he would have to whack Mr. Szablak upside his head. All members interviewed agreed that the comment was not made in connection with any discussion concerning the campaign but in discussion concerning the problems of the Local as it related to grievances with management All of the members who were present and contacted by the Regional Coordinator advised that they did not believe the remark had anything to do with the election nor did they understand it in that manner. The witnesses' perception as to whether Mr. Szablak took the remark as a joke or kidding was divided

Article VIII of the *Rules* provides in Section 10 that all Union members have the right to participate in campaign activities including the right to run for office. Clearly, it would be a violation of the *Rules* to threaten physical harm to any member for exercising those rights Based on the facts as provided to the Election Officer by all witnesses in connection with this incident, it is clear that Mr. Majka did state to Mr. Szablak that he would whack him upside the head. However, it is equally clear that the remark was not made in the context of Mr Szablak's exercise of his rights under the *Rules*. Although the remark may not have been an inappropriate one to make in general society, the investigation did not disclose any evidence which would support the conclusion that Mr Majka seriously intended to harm Mr. Szablak physically nor did the members present believe that any harm was intended Therefore, the Election Officer determines that Mr. Majka did not violate the *Rules* by making the statement.

Even assuming that the statement made to Mr Szablak was a violation of the *Rules*, the Election Officer would determine that the violation did not affect the outcome of the election As noted above, the candidate for delegate with the closes vote total to Mr Szablak received approximately 580 more votes than Mr. Szablak. Only 10 members were present when the remark was made to Mr Szablak by Mr Majka. Mr. Szablak does not allege that he in any way altered his campaign due to the remark made by Mr. Majka nor have any additional protests been filed alleging similar facts.

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Therefore, the Election Officer determines that the remark made by Mr. Majka to Mr. Szablak did not affect the outcome of the election

The 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) 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/mca

cc Frederick B. Lacey, Independent Administrator
William B. Kane, Regional Coordinator