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December 20, 1990

VIA UPS OVERNIGHT

Lonnie Bedell
14 Nelkin Drive
Apartment 14
Wallington, NJ 07057

Girolemo Musso
President
Local Union 641
255 Route 3 East
Secaucus, NJ 07094

**Re: Election Office Case Nos. P-158-LU641-NJE
P-159-LU641-NJE**

Gentlemen:

I. INTRODUCTION

Presently before the election officer are two protests filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules") both concerning the conduct of the Local 641 election for delegates and alternates to the International Convention. The first concerns whether Local 641 member Lonnie Bedell should be placed on the ballot in the delegate election without first being nominated and seconded in a general or special membership meeting of Local 641. The second concerns whether Local 641 should be required to conduct its election for delegate and alternate delegate by mail ballot.

II. FACTUAL BACKGROUND

Lonnie Bedell is a member in good standing of Local 641 IBT and is eligible to be a candidate for delegate to the 1991 IBT International Convention. Girolemo Musso is the President of Local 641, and has been a member of the Local for many years. In the fall of 1989, Bedell attempted to run against Musso for the position of President of Local 641, but was precluded from running by action of the Local. He filed a protest in accordance with Title IV of the Labor-Management Reporting and Disclosure Act, 29

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U.S.C. §401, 481-484, and his complaint was investigated by the United States Department of Labor, Office of Labor Management Standards Enforcement. As a result of the investigation, the Secretary of Labor filed suit pursuant to 29, U.S.C. §482, and in early 1990, the Government and Local 641 entered into a stipulation of settlement whereby the Department of Labor supervised a new election in Local 641 for the office of president. In the new election, Bedell was placed on the ballot to run against Musso. The local did not require that Bedell be formally nominated for that election.

The Department of Labor and the New Jersey State Board of Mediation supervised the election for local president, held by walk-in vote at the Local 641 office in Secaucus on June 3, 1990. Musso defeated Bedell by a vote of about 1081 to 80. Bedell has protested the conduct of the supervised election, and the Department of Labor has not yet certified the election to the United States District Court.

In the fall of 1990, Bedell announced to friends and supporters that he would run for the position of convention delegate against members of the Executive Board of Local 641. Bedell has distributed literature to members of the Local 641 concerning his candidacy for the position of convention delegate.

On Thursday, December 6, 1990, the day after he had distributed literature critical of his opponent at Local 641 jobsites, Bedell received a telephone call at his home. Bedell recorded this phone call. The content of the telephone call is as follows:

Lonnie Bedell: Hello.

Unidentified Male: Hey, now listen motherfucker, we got one of your flyers knockin' Sonny.

Lonnie Bedell: Who's this?

Unidentified Male: Fuck you. If you get nominated on Sunday somebody in your family is gonna get hurt real bad. And so will the ones that nominate. Got it, you scumbag?

Lonnie Bedell: Who's this, you fuckin' dog?

Unidentified Male: Fuck you! (Hang up)

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On Friday, December 7, 1990, Bedell telephoned the Election Office and stated that he had received the foregoing threatening call, and that out of fear for the well-being of his nominators, he would not have his name placed in nomination for IBT International Convention delegate. Local 641 had scheduled its nomination meeting for Sunday, December 9, 1990 at 11:00 a.m. at the Ukrainian Community Center in Jersey City, New Jersey. Bedell did not request any particular form of relief, but only described to the Election Officer the nature and extent of his problem.

The Election Officer immediately commenced an investigation. On December 7, 1990, the Regional Coordinator for New Jersey contacted Bedell for a description of the threatening event. Subsequently the Regional Coordinator received and reviewed the tape of the conversation. The Regional Coordinator reports that the tape appears to be authentic.

On December 8, 1990, the Regional Coordinator interviewed Bedell and the persons whom Bedell had identified as potential nominators and seconders of his nomination at the December 9, 1990 nomination meeting. The Regional Coordinator has reported that these nominators and seconders were members in good standing of Local 641 and eligible to nominate and second the nomination of Bedell at the December 9, 1990 meeting.

The Election Officer has referred the matter of the threat to the Federal Bureau of Investigation and the Investigation Officer for such action as they deem appropriate. Any investigation initiated by the Investigation Officer and the FBI would not effect the election process; thus, the Election Officer took the following immediate steps to insure the integrity of that process.

At the nomination meeting on December 9, 1990, the Regional Coordinator, acting on the instructions of the Election Officer, informed first the leadership, and then the membership, of Local 641 that Bedell's name would be placed on the ballot without formal nomination. It is this decision of the Election Officer -- the placement of Bedell's name on the ballot without formal nomination -- that is challenged in the instant protest.

Through the Regional Coordinator, the Election Officer also notified Local 641 that, on his own motion, he is considering requiring that Local 641 conduct its election for delegates by mail ballot -- the subject of the second protest herein. By letter dated December 12, 1990, Bedell filed a protest in which he objected to the approval given previously by the Election Officer to a walk-in election to be conducted on January 27, 1991.

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The June 3, 1990 election for Local 641 President was conducted under the supervision of the Department of Labor by walk-in election in the Local Union offices. Bedell contends that during the course of the June 3, 1990 election, he and his supporters were subjected to verbal abuse by supporters of Musso. The Local denies that any abuse occurred. The Local further contends that the Department of Labor will seek to certify the June 3, 1990 election results, thus demonstrating the lack of merit of Bedell's claims of abuse. No such certification has yet occurred.

Mr. Bedell states further that the coincidence of the delegate election with Super Bowl Sunday will create a situation that promotes abuse of his supporters by the incumbents supporters. The Local points out that the election polls will be open from 9:00 a.m. to 6:00 p.m.. The football game does not start until 6:00 p.m., thus permitting members many hours to vote before the game's start.

III. DISCUSSION

A. Placement of Bedell's name on the ballot without requiring him to undergo formal nomination at the Local 641 nomination meeting.

The Preamble to the Rules, as approved by the United States District Court the Southern District of New York, permit the Election Officer to take such action as he deems appropriate to conduct the elections in accordance with the Consent Order entered on March 14, 1989. The decision to place Lonnie Bedell on the ballot without having to undergo formal nomination complies with the Consent Order and the Rules for the following reasons.

The threat to Bedell and his nominators was unquestionably real. Neither Bedell, nor Local 641, nor the Election Office knows the source of the threat. Bedell's opponents have intimated that Bedell may have "set up" the call for political reasons, and this contention cannot be disproved. The Regional Coordinator, however, interviewed the persons who would have nominated and seconded the nomination of Bedell, and can state to a certainty that these persons were members in good standing eligible to do so. Accordingly, Bedell had obtained the support required under Rules to achieve nomination. Rules, Article II, §3(e) and (h).

For the Election Officer to require that Bedell produce the nominators and seconders at a public meeting in the face of a potential threat to their well-being would require that those individuals expose themselves to the threatened retaliation. The risk this entails is substantial and is unnecessary, given that

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the Regional Coordinator's investigation has already determined that Bedell had support from the necessary members of Local 641 members, all in good standing, to achieve nomination.

Local 641 argues that the rules have been violated because Bedell was not nominated in accordance with the Rules. Article II, §3(e). It is clearly true that by allowing Bedell's name to be placed in nomination other than at a general or special membership meeting, the Election Officer has permitted Bedell to bypass the particular Rule cited by Local 641. However, Bedell has himself been the subject of a Rules violation, since the Rules prohibit threats, intimidation and retaliation against any member of the union who seeks to run for office.

It is the purpose of the Consent Order, and the Rules which authorize the Election Officer the right to effectuate remedial measures, including placing a nominee on the ballot, Rules, Article XI, §2(a), to prevent volitions of the sort visited upon Bedell. The remedy imposed by the Election Officer gives Bedell nothing more than he would have obtained had he not been threatened. There were members in good standing with Local 641 prepared to nominate and second the nomination of Bedell. The Election Officer's representative has interviewed these members; Bedell has not obtained an unfair advantage. Accordingly, the decision to place Bedell on the ballot without undergoing formal nomination will stand.

B. Whether Local 641 should be required to conduct its Delegate Election by mail ballot

Mr. Bedell protests the Election Officer's approval of a Local Union plan for Local Union 641 which provides for the delegate and alternate delegate elections be conducted by in-person voting.¹ Under the Rules, the Local Union Plan process, including the approval of the Local Union Plan, is solely within the discretion of the Election Officer. Rules, Article II, §1 and 2. Thus the terms of a Local Union Plan, whether as proposed by the Local Union or approved by the Election Officer, are not subject to protests pursuant to Article XI of the Rules.

¹The Plan as approved by the Election Officer had been modified from the Plan the Local Union initially proposed; however, the approved Plan, as the proposed Plan, provides for in-person voting.

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The Election Officer, however, retains the authority under the Rules to change or modify the terms of any Local Union Plan including modifying those portions of the Local Union Plan dealing with the method of conducting the election. Rules, Article I and Article II §2(b)(5). In the instant case, the Election Officer has already notified Local 641 that he is considering requiring that Local 641 conduct its election for delegates by mail ballot. The Election Officer has now determined to require that Local 641 conduct its delegate and alternate delegate election by mail balloting procedures.

Mail ballots may well generate substantially higher voter participation than walk-in elections. The Rules provide for absentee ballots for all members unable to vote in person because of work, vacation, illness, injury, obligation to serve jury duty, or military obligation, or when the member lives and works more than 35 miles from the election site, Rules, Article XII, §2. Absentee voting places some burdens, however, on the election process. Unlike the mail ballot procedures where all members automatically receive their election ballots, a specific request must be made for an absentee ballot. Rules, Article XII, §2(b)(1). Thus a mail ballot furthers the policy of the Consent Orders and the Rules by broadening participation in the election process.

Further, and perhaps of greater importance to the instant situation, mail balloting significantly reduces the possibility of any threats, coercion, intimidation and inappropriate influence or campaigning on election day. The potential for inappropriate behavior is always present during in-person voting. The candidates and their representatives may congregate outside the polling place and solicit votes. Solicitation can become intimidating or threatening.

In the instant case where actual threats have been received, the potential for improper election day campaigning, threats and intimidation cannot be ignored. Eliminating in-person voting by providing for a mail ballot election, will insure that members of Local 641 are not impeded in casting their votes by wrongful conduct.²

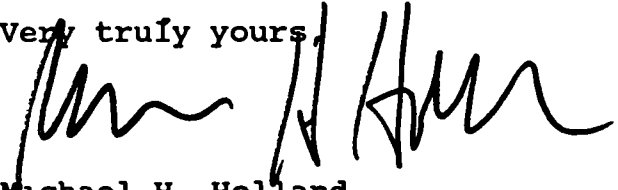
²The Election Officer is not unaware of the potential for threats and intimidation with respect to mail balloting procedures. However, the Rules prohibit any attempts by any Union member, officer, business agent, steward, et cetera to request or obtain any other member's mail ballot. Rules, Article XII, §3(d). Further mail ballots are delivered to the members home, voted in the privacy of the member's home and also returned by personal

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For the foregoing reasons, the Election Officer has determined that Mr. Bedell's protest is improper under Article XI of the Rules, but has nonetheless determined under the authority retained by him under the Rules to require Local 641 to conduct its delegate and alternate delegate elections by the mail balloting process. The Election Officer or his representative will be in communication with the appropriate officials of Local 641 to arrange the details of the process.

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 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,


Michael H. Holland

MHH/BJH/sst

cc: Mr. Frederick B. Lacey
Ed Ellis, Regional Coordinator

mailing of the member. The process eliminates contact between the voting member and any other person, thus reducing the possibility of threats, coercion, and intimidation.