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Michael H. Holland
Election Officer

January 14, 1991

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VIA UPS OVERNIGHT

Robert Romano
12632 Friar Place
Philadelphia, PA 19154

Edward Woods
Secretary-Treasurer
Local Union 107
107 Spring Garden Street
Philadelphia, PA 19123

Re: Election Office Case No. P-197-LU107-PHL

Gentlemen

A pre-election protest was filed pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*"). In his protest, the complainant, Robert Romano, alleges that the officers of Local Union 107, who are running for delegate and alternate delegate to the 1991 IBT International Convention as the Cimino Slate, violated the *Rules* as a result of the failure to post the Summary of the Local Union Election Plan and the notice of nominations results for the Local Union. The complainant also alleges that the officers of the Local Union violated the *Rules* they engaged the services of the Local Union's counsel to file an appeal of adetermination of the Election Officer with respect to a protest concerning the "Ron Carey" slate name. The Election Officer's investigation revealed the following.

Robert Romano is a member of Local Union 107 and a candidate for delegate to the 1991 IBT International Convention running on the "Ron Carey Slate". The Ron Carey slate is opposed by the Cimino Slate, whose members are members of the Local Union Executive Board, including the President, Vice President and Secretary-Treasurer of the Local Union. The members of the Local Union are employed at a number of work places throughout the Philadelphia area.

With the exception of the bulletin board in the Local Union Hall, the Secretary-Treasurer of the Local Union did not post the Summary of the Local Union Election Plan or the notice of nominations results on Local Union bulletin boards. These bulletin boards are located at job sites where members of the Local Union are employed and have been used in the past by the Local Union for the posting of official union notices, including notices regarding the Local Union officer elections. The Secretary-Treasurer of the Local Union directed the shop stewards to post copies of the summary

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of the Local Union Election plan and the nomination results for the first time on January 7, 1991, only after the filing and service of the instant protest.

On December 16, 1990, the Local Union held its nominations meeting for delegates and alternate delegates to the 1991 IBT International Convention. On December 18, 1990, the Cimino slate filed a protest with the Election Office objecting to the use of the name, *i.e.*, "Ron Carey Slate", selected by their opponents for their slate of delegate candidates. On December 26, 1990, the Election Officer issued his determination denying the protest. On December 28, 1990, the Local Union's counsel, Thomas H. Kohn, Esquire, filed an appeal with the Independent Administrator of the Election Officer's determination in that protest.

On January 2, 1991, a letter was submitted by John Smalley, signing as Vice-President of the Local Union, on official union letterhead, stating that he wished to withdraw the appeal. In his letter, Mr. Smalley explains that the original protest was not filed by the Cimino Slate but rather by the Executive Board of the Local Union. All delegate candidates on the Cimino slate are members of the Local Union's Executive Board. Mr. Smalley further states that while the executive board's use of Local Union counsel to file the appeal was a proper union expenditure, the Local Union was withdrawing the appeal "in an effort to avoid any unnecessary delay or arguments."

Article II, § 2 (d) of the *Rules* provides that the Secretary-Treasurer of the Local Union shall post a copy of the Local Union Election Plan Summary on all Local Union bulletin boards within seven days of its approval by the Election Officer. By letter dated November 21, 1990, Election Office Regional Coordinator, Peter Marks, Sr., transmitted a copy of the approved plan and summary to the Local Union. In his letter, Marks stated "[p]lease be prepared to post this Summary wherever you would normally post notices to members of Local 107." Mr. Marks also reminded the Local Union that it was responsible for insuring that the Summary remain posted throughout the election period.

Article II, § 4 of the *Rules* provides that the Local Union Secretary-Treasurer shall post, on all Local Union bulletin boards, a list of all candidates nominated for the positions of delegate and alternate delegate no later than seven days following the nomination meeting. In an Advisory, dated December 10, 1990, the Election Officer stated that such notices shall be posted despite the existence of pending protests. As stated above, the Local Union 107 nomination meeting was held on December 16, 1990.

The Election Officer determines that the Local Union 107 Secretary-Treasurer violated the *Rules* with respect to the posting of the Local Union Election Plan Summary and the notice of nomination results. The purpose of such posting is to inform the

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members of the Local Union of the procedure for nominating and electing delegates, the fact that such election is contested and the identity of the members and slates of candidates contending for the positions of delegate and alternate delegate. A candidate, particularly a candidate who is not well known within the Local Union, is disadvantaged when his/her fellow members are not informed that there is going to be an election and that he/she is a candidate for delegate.

The Election Officer's remedy, outlined below, is designed to correct the violation of the **Rules** and to make the injured party whole. However, the remedy does not extend to the members of the Cimino slate, who include the Secretary-Treasurer and the other principal officer of the Local Union, because the members of the slate, acting in their official capacities, were responsible for the violation. In the Election Officer's view, it would be inequitable, and inconsistent with the purposes of the **Rules**, to grant relief to a party who is responsible for the violation of the **Rules** that causes the injury in the first place.

Article VIII, § 10 of the **Rules** provides that no candidate may use the funds or resources of the Local Union for campaign purposes unless such use is reimbursed by the candidate and available to all candidates. In the instant case, the Election Officer finds that the members of the Cimino slate used the services of the Local Union's attorney without reimbursing the Local Union for such use, nor did they inform the other candidates that counsel was available for their use. This constitutes a violation of the **Rules**.

To remedy these violations of the **Rules**, the Election Officer orders the following:

- 1 Local Union 107 shall, at its own expense, copy and distribute to all members of the Local Union, via first class mail, copies of a campaign leaflet prepared by the Ron Carey Slate. This mailer shall be on a single 8.5" by 11" piece of paper, tri-folded for mailing. The Ron Carey Slate shall submit a camera ready copy of this mailing to the Local Union, with a copy to the Election Officer, and the Local Union shall cause the leaflet to be mailed to all members of the Local Union within forty-eight(48) hours of its receipt.

- 2 The members of the Cimino slate shall personally reimburse the Local Union for any fees and expense paid by, or billed to, Local Union 107 by the Union's attorney for the appeal in Election Office Case No P-147-LU107-PHL.

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3. The members of the Cimino slate shall cease and desist from any further or similar use of the Local Union's counsel in matters promoting or affecting their candidacy for delegate and alternate delegate to the 1991 IBT International Convention.

4. The Secretary-Treasurer of Local Union 107 shall, within ten (10) days of this decision, submit to the Election Officer an affidavit detailing the steps that the members of the Cimino Slate have taken to comply with this order.

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
Election Officer

cc Frederick B Lacey, Independent Administrator, IBT
Peter Marks, Sr Regional Coordinator