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Michael H Holland
Election Officer

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January 15, 1991

VIA UPS OVERNIGHT

Virginia McGuinness
8650 Blvd East
Apt 1-A
N Bergen, NJ 07047

Robert Marra
Secretary-Treasurer
IBT Local Union 560
707 Summit Ave.
Union City, NJ 07087

Daniel Sciarra
President
IBT Local Union 560
707 Summit Ave
Union City, NJ 07087

Re: Election Office Case No. P-231-LU560-NJE

Gentlemen

A pre-election protest has been filed pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") The protest challenges the application of the *Rules*, Article II § 6, which provide that elections need not be held when there is no contest for alternate delegate positions.

The facts reveal that there are two slates of delegate candidates in Local 560 One, called the *Teamsters for Liberty*, has fielded a slate of 10 delegate and 3 alternate candidates. The other, the *Membership Slate*, has fielded 6 delegate candidates. Under the *Rules*, the alternate delegate candidates from the *Teamsters for Liberty* slate who face no opposition "shall be declared duly elected" and therefore are not listed on the ballot

The protest makes two arguments against the application of the Rule First, the protest raises the issue of how to rank alternate delegates in accordance with Article II § 10 when there is no voting for Convention alternate delegate candidates The answer to this question is provided in the text of Article II § 10, the Rule provides that in the "event of a tie vote, the ranking of delegates and alternate delegates shall be resolved by

Virginia McGuinness
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vote, the ranking of delegates and alternate delegates shall be resolved by lot " Thus, if there is a need to rank alternate delegates who have been elected in uncontested elections, that ranking should be done by lot.

The protest also raises the issue of the effect of the removal of uncontested candidates for alternate delegate from the ballot on the ability of the voters to choose in that portion of the election which remains contested This argument, in essence challenges the validity of the Rule The Election Officer will not modify the *Rules* at this time Moreover, since all delegate and alternate delegate candidates are posted in the delegate nomination process, any voter can readily ascertain the identities of members of the slate including slate members whose candidacies are uncontested

For these reasons, 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 201-622-6693
Edward T Ellis, Regional Coordinator
Edwin Stein, Court-Appointed Trustee, Local Union 560

Paul A Montalbano
Scheider, Cohen, et al
1150 Raritan Road
Cranford, NJ 07010

IN RE.

VIRGINIA MCGUINNESS, ALFRED
LAURIE, and IBT LOCAL UNION
NO. 560, et al.

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This matter arises out of an appeal from a January 15, 1991, decision of the Election Officer regarding pre-election protest No. P-231-LU560-NJE. A hearing was held before me on January 25, 1990, at which the following persons were heard: John Sullivan and Edward Ellis, on behalf of the Election Officer, Paul Montalbano, attorney for the IBT Local Union 560 ("Local 560") Election Committee; Michael J. Sciarra, Jr., an elected alternate delegate; and Alfred Laurie, chairman of Local 560 Election Committee. Daniel Sciarra, President of Local 560, was also present at the hearing.

This appeal concerns application of Article II, Section 6 of the Rules For The IBT International Union Delegate And Officer Election (the "Rules"). Article II, Section 6 provides in pertinent part as follows:

[W]hen the number of nominees for alternate delegate does not exceed the number of alternate delegates to be elected, there shall be no necessity for an election for alternate delegates and such nominee(s) shall be declared duly elected.

Local 560 is entitled to elect three alternate delegates to attend the 1991 International Convention. Because the number of alternate delegates nominated at the Local 560 nominations meeting (three) did not exceed the number of alternate delegates

to be elected (three), the election is uncontested. The unopposed nominees for alternate delegate are deemed "duly elected" pursuant to Article II, Section 6. The Appellant (the "Local 560 Election Committee"), however, seek to include on the ballot the names of the three alternate delegates even though they are already "duly elected." In the alternative, they seek to include a separate notice along with the ballots that would be sent to the Local 560 rank and file explaining that those three alternates have been "duly elected" by virtue of the Rules.

The proposal to list or include the names of the three "duly elected" alternates on or with the ballot is inconsistent with Article II, Section 6. The Rules were the by-product of an arduous adoption process spearheaded by the Election Officer. The Rules were ultimately approved and adopted by United States District Court Judge David N. Edelstein. United States v. International Brotherhood of Teamsters (Application X), slip op. (S.D.N.Y. July 10, 1990). Thus, the Appellant's implicit suggestion that the Election Officer modify the Rules at midstream in the election process must be rejected. Moreover, Article II, Section 6 is rooted in sound policy considerations. The provision rids the election process of superfluous proceedings.

The Appellant argues that the listing of the names on the ballots is needed to rank alternate delegates by virtue of the number of votes they receive. However, listing of names on the

ballots is not needed to establish ranking of alternates because the Rules establish that under such circumstances, ranking shall be resolved by lot. See Rules, Article II, Section 10(a). This provision states that "in the event of a tie vote, the ranking of delegates and alternates shall be resolved by lot." While there was no "tie vote" here, per se, the fact that all three alternates were automatically "duly elected" in the same manner is functionally equivalent to a "tie vote." To rule otherwise would be to ignore the provision for uncontested elections found in Article II, Section 6.¹

Furthermore, the Appellant argues that given the "cloud" over the Local, the integrity of the lot drawing to determine priority of the alternate delegates will most likely be questioned. To this I answer that the Election Officer, or his representative, will not only supervise that process, but will physically draw the lots, thereby insuring the integrity of the process.

Nor is the listing of names necessary to the integrity of the full slate. The Rules require a full list of nominees and their slates to be posted on all union bulletin boards after the

¹ The Rules in this regard are wholly consistent with the IBT Constitution. See IBT Constitution, Article III, Section 5(a)(1) ("In the event either the Trustees or Business Agents have been elected by white ballot, their order of priority shall be determined by lot.") See also IBT Constitution, Article XXII, Section 4(e) ("Where the nominee is unopposed . . . there shall be no necessity for the election of such nominee and he shall be declared duly elected . . .").

nominations meeting. Rules, Article II, Section 4. Thus, a complete listing of the nominated slate is readily available to the membership.

Lastly, as the Election Officer properly notes:

[O]utweighing the perceived desirability of a listing of the entire slate on the ballot is the potential for confusion that would be engendered by the by appearance of names for whom no vote is being conducted.

The Appellant counters that the rank and file of Local 560 would be more confused if they receive a ballot that does not contain the names of the three alternates. It is argued that without an explanation as to why their names are not on the ballot, confusion will be the likely result. With regard to this concern, I first note that Local 560's Election Notice clearly stated that three alternates would be elected. Thus, since only three were nominated, it logically follows that they have automatically been chosen ("duly elected"), even in the absence of the express statement of the governing Rule in the Election Notice.

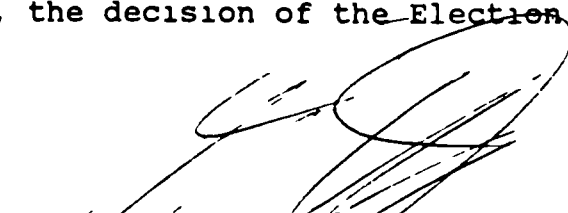
Secondly, if the Appellant, or the slate to which the alternates belong, are truly concerned with the members' confusion, they may, at their own expense, mail or post their own notice explaining the status of the "duly elected" nominees.

Lastly, the Appellant voiced concern relative to the Election Officer's motive for including footnote 2 at p. 4 in his written Summary. That footnote reads:

The Election Office is especially sensitive to the danger of confusion and distraction in this case, where one of the alternates bears the name of a former officer of the local and a leader of the Teamsters for Liberty faction member and who is not a candidate in this election. The unnecessary addition of uncontested candidates under these circumstances appears particularly inappropriate.

The Appellant suggests that the Election Officer was somehow trying to taint the alternate in question by referencing his father, who apparently is, or has been, involved in separate legal proceedings involving his former position with the Local. I reject this suggestion as inappropriate. The Election Officer's purpose in including this footnote is wholly proper. The Election Officer was merely referencing yet another point of confusion (the confusion of similar names) that may result if the alternates names were listed on the ballot. As an aside, I note that I did not consider this argument (regarding the confusion resulting from similar names) in making this ruling.

For the reasons stated herein, the decision of the Election Officer is affirmed.



Frederick B. Lacey
Independent Administrator
By: Stuart Alderoty, Designee

Date: January 29, 1991.