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January 17, 1991

VIA UPS OVERNIGHT

Jeffrey M Cler
604 Bristol Road
Trevose, PA 19053

Joseph Cimino, Jr.
President
IBT Local Union 107
107 Spring Garden Street
Philadelphia, PA 19123

Re: Election Office Case No. P-247-LU107-PHL

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. The complainant seeks a postponement in the delegate election, primarily on the basis of his allegation that the Election *Rules* require a 45 day period between the nomination of delegates and delegate elections. The material submitted with the protest also asserts other reasons for delaying the delegate selection which will be reviewed below. For the reasons which follow, the Election Officer will not postpone the delegate election in this Local.

Under the Local Union Election Plan in this Local, delegate nominations took place on December 16, 1990. Two slates of delegates were nominated, "The Cimino Slate" and the "Ron Carey Slate". In this mail ballot election, ballots should be received by Local 107 members by January 25, 1991. They must be received back by February 5, 1991 After 12.00 Noon on February 5, ballots will be collected and counted.

There have been at least two other protests which the complainants assert have a bearing in this case One protest, filed by Local Vice President John E. Smalley, contended that the naming of a slate the "Ron Carey Slate" was impermissible under the *Rules* That protest was denied on December 26, 1990, on the basis that the *Rules* permit any slate name that does not designate incumbency, contain obscenities or is too lengthy for the ballot The complainant in that case appealed. The appeal was later withdrawn prior to hearing.

On December 31, 1990, Carey slate member Robert Romano filed a protest against the "Cimino Slate in Local 107" alleging that the Local Union had not posted either the Election Plan or the nomination results for the Local at Union bulletin boards at employer work sites. Further, the protest contended that the Cimino slate improperly used union funds to pay for attorneys to appeal the protest based upon the name of the Ron Carey slate. In a recently issued decision, P-147-LU107-PHI, the Election Officer found merit to all three protests and entered an order granting the following relief:

1. the mailing of a leaflet prepared by the Ron Carey slate, the costs of which mailing is to be provided by Local 107;
2. that the members of Cimino slate reimburse Local 107 for any attorney fees or expenses incurred in the appeal of the Election Officer's December 26, 1990 decision and that the Cimino slate cease and desist from similar use of Local Union counsel.

As stated above, the primary issue raised by this protest is the allegation that there is not a 45 day period between the day of nominations and the election. The protest reasons that January 25, 1991, the date of ballot mailing, is less than 45 days from December 16, 1990, the date of the nominations meeting. This reasoning is without merit. The election will take place on the day the ballots are counted, which is February 5, 1991. This date is over 45 days from the day of the delegate nominations.

The material submitted with the protest contends that the Election date should be delayed because the slate name protest prevented the printing of literature in a timely manner. The material indicates that the Romano slate intends to make a mailing with its own list. Thus, even with the arguable "delay" due (only in part) to the protest, the Ron Carey slate has over three weeks to accomplish their literature distribution. Moreover, part of the remedy in the December 31, 1990 protest allows the slate to expeditiously use the Local's resources for a mailing. Accordingly, there is no reason whatsoever to delay the election date.

The material submitted with the protest also refers to the Local's failure to post Election plans. That issue was resolved by the decision and remedy in case P-147-LU107-PHI, providing for a mailing, at Union expense.

For the foregoing reasons, the protest and request to postpone the election are **DENIED**

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

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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

cc: Mr. Frederick B. Lacey
Peter Marks, Regional Coordinator