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February 12, 1991

VIA UPS OVERNIGHT

Ken Scheuer
2601 N Summit
Appleton, WI 54914

Dennis Vandenberg
Secretary-Treasurer
IBT Local Union 563
1125 Wittman Drive
Menasha, WI 54952

Re: Election Office Case No. P-440-LU563-NCE

Gentlemen

A pre-election protest was filed by Ken Scheuer, a member of Local Union 563, pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*"). A copy of that protest is attached.

In his protest, Mr Scheuer asserts that Dennis Vandenberg, Secretary-Treasurer of Local 563, is not eligible to be nominated as an alternate delegate candidate from Local 563 due to the fact that he was convicted of one felony count of converting Union funds. Mr. Dennis Vandenberg was nominated as an alternate delegate candidate at Local 563's nomination meeting, which occurred on February 2, 1991.

The investigation conducted by the Election Office established the following facts.

On October 25, 1990, Mr Vandenberg was convicted of converting Union funds in violation of § 501(c) of the Labor Management Reporting and Disclosure Act (LMRDA). His sentencing was originally scheduled for January 1, 1991 and was subsequently postponed to March, 1991. Mr Vandenberg has also filed an appeal of his conviction.

29 USC § 504(a) of the LMRDA prohibits any person who has been convicted of a disabling offense from serving "as a representative in any capacity of any labor organization." Under 29 USC § 504(a), a disabling offense is defined as "any felony involving abuse of or misuse of such person's position or employment in a labor organization." Conversion of Union funds is considered a disabling offense under 29 USC § 504(a).

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Section 504(c)(6) of the LMRDA further provides that a conviction occurs on the date of the judgment of the trial court. 29 USC § 504(c)(6). The judgment of the trial court is not rendered, however, in a criminal case until the date of sentencing. Rule 32, Federal Rules of Criminal Procedure.

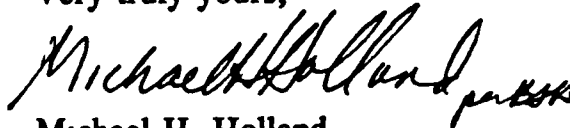
Therefore, since Mr. Vandenberg has not yet been sentenced under § 504 of the LMRDA, he has not been formally convicted of a disabling offense within the meaning of § 504 (c)(6) of LMRDA. Thus, as of this date, Vandenberg is eligible to be nominated as and seek the position of alternate delegate from Local 563.

Article IV, § 2 of the *Rules* provides that any member may challenge the eligibility of any previously elected delegate or alternate by filing a challenge with the Credentials Committee at the 1991 IBT International Convention. The *Rules* further provide that no "challenge may be filed over issues or events covered by the protest procedures of Article XI of these Rules." Since Mr. Vandenberg's sentencing will not occur until March of 1991 or later, a protest concerning his conviction of a disabling offense under 29 USC § 504 (c) could be properly raised in June before the Credentials Committee at the Convention

The facts alleged in Mr Scheuer's protest do not constitute a violation of the *Rules* at this time Accordingly, the above described 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
Barbara Z Quindel, Regional Coordinator