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March 4, 1991

VIA UPS OVERNIGHT

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Olga Navarrette
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Los Angeles, CA 90063

Re: Election Office Case Nos. P-500-LU630-CLA
E-243-LU630-CLA

Gentlemen:

Local 630 held nominations for candidates to run for delegate and alternate delegate to the 1991 IBT International Convention on February 9, 1991. George Quintero, Carlos Barnett, Olga Navarrette, Catherine M. Burke, Maria Ontiveros, and Douglas Magann were nominated to run for delegate by Raul Rodriguez, Jr. (Soc. Sec. No. 569-58-0931) and the nominations were seconded by Dan Mulder (Soc. Sec. No. 567-52-7818). Raul Rodriguez, Jr. and Abigail Chacon were nominated to run for

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delegate by Carlos Barnett (Soc Sec No 570 94 7053) and the nominations were seconded by Dan Mulder (Soc Sec 567 52 7818) James Hermon was nominated to run for delegate by Dan Mulder (Soc 567 52 7818) and the nomination was seconded by Carlos Barnett (Soc Sec No (570 94 7053)

Walter Pettit filed a timely protest challenging the eligibility of each of the above named members to run as candidates for delegate contending that each of them did not meet the requirements of continuous good standing for twenty four months prior to the month of nomination

Raul Rodriguez and Catherine Burke filed a pre election protest concerning the practice of the Local requiring payment of quarterly dues from cash dues payers to be paid in the first month of the quarter and refusing to accept cash dues on a monthly basis. They allege that such practice renders a significant number of members of the Local ineligible to run for delegate or to vote. The complainants contend that his practice violates the *Rules for the IBT International Union Delegate and Officer Election* effective August 1 1990 (*Rules*)

I The Eligibility of Those Members Who Nominated and Seconded Nominations

Article II Section 3(h) of the *Rules* provides that to be eligible for nomination a member must be nominated and seconded by a member in good standing each with his/her dues paid through the month prior to the nominations meeting. The TITAN records of the above named nominators and seconders reflects that each of them had their dues paid through January 1991 the month prior to the month of the nomination meeting. It follows therefore that each of them was eligible to nominate and second the nomination of candidates for delegate or alternate delegate.

II Quarterly Dues Payments (P 500 LU630 CLA)

Article VI Section 1() (1) of the *Rules* provides that in order to be eligible to run as a delegate to the IBT International Convention a member must be in continuous good standing of the Local Union with one's dues paid to the Local for a period of twenty four (24) consecutive months prior to the month of nomination with no interruptions in active membership due to suspensions expulsions withdrawal transfers or failure to pay fines or assessments. Article X Section 5(c) of the IBT International Constitution provides

All members paying dues to Local Unions must pay them on or before the last business day of the current month. Membership dues to the Local Unions are due on or before the first day of the month and must be paid on or before the last business day of that month. Any member failing to pay his dues at such time shall not be in good standing for such month but may restore good standing for such month for the purpose of attending meetings nominating voting and

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participating in the affairs of the Local Union by the payment of his delinquent dues prior to said meeting. Payment of such dues after the due date shall not restore good standing status for such month or months in computing the continuous good standing status required by Article II Section 4 of the Constitution as a condition of eligibility for office.

The Bylaws of Local Union 630 also provide in Section 16 paragraph C as follows
(1) every member whose dues are paid up through the month which is prior to the month in which nominations or election is held shall have the right to nominate vote for or otherwise support the candidate of his choice
(2) every member in good standing by the payment of his dues on or before the last business day of the current month in accordance with the International Constitution and who has been in such continuous good standing for each consecutive month in the twenty four month period immediately prior to nominations shall be eligible to hold office if he is otherwise qualified

The Local Union contends that it established a policy of quarterly dues payments for cash dues payers in 1947. The minutes from the General Membership meeting of 1947 were forwarded to the Election Officer showing that a motion was made and passed by the floor of the Union to establish quarterly dues payments. The IBT Constitution Article X Section 5(d) states: A Local Union may provide in its Bylaws for the payment of quarterly dues provided such Bylaws are approved by the General President of the International Union. In any instance where a Local Union has provided for the payment of quarterly dues under this section a member to be in good standing for each month of the quarter must pay his dues for each quarter on or before the last business day of the first month of the quarter. The Local Union contends that some of the above mentioned candidates are ineligible to run since they did not pay their dues in a timely fashion pursuant to the quarterly dues provisions. The complainants contend that the enforcement of said provision would violate the *Rules*.

As noted above the Bylaws of the Local Union in the section concerning eligibility of members to nominate vote or run for office do not discuss a requirement of payment of quarterly dues. The dues provision of the Bylaws Section XVII does not provide for the payment of quarterly dues. The only provision of the Bylaws which discusses quarterly dues payment is Section 19 which is entitled Membership. Section 19 (B)(1) states that a member shall lose his good standing membership in the organization by nonpayment of dues on or before the last business day of the first month of the current quarter. This definition of good standing contained in Section 19 clearly conflicts with the definition of good standing contained in Section 16 quoted above concerning nominations and election. The By Laws do not in any other Section discuss the adoption of quarterly dues payments. It is the determination of the Election Officer that the Local has not provided in its Bylaws as required by Article X Section 5(d) of the IBT Constitution for the payment of quarterly dues.

The Investigation conducted by the Election Office has revealed that the Local refuses to accept any partial cash payments of quarterly dues. The membership information distributed by the Local specifically states that partial payments of dues are not accepted. Thus, a member is precluded from paying cash dues on a monthly basis, but must pay the entire quarter at one time.

As stated above, the Local has not complied with requirements of the IBT Constitution to institute quarterly dues. Therefore, it is the determination of the Election Officer that quarterly dues paid within the quarter meet the good standing requirements of the IBT Constitution and the Bylaws of the Local, and thus the similar requirements of the *Rules*.

Accordingly, the protest of Mr. Rodriguez and Ms. Burke is GRANTED to the extent that any member would be precluded from running for delegate or alternate delegate by failing to pay their dues within the first business month of the quarter for that quarter.¹ Further, since the delegate and alternate delegate election with respect to Local Union 630 is to be conducted prior to the end of the first quarter of 1991, the Election Officer determines that any member who has paid his/her dues through December 1990, the last month of the prior quarter shall be eligible to vote in the March 1991 election for delegate and alternate delegate.

III. The Eligibility of the Candidates (E-243-LU630-CLA).

A. Douglas A. Magann.

The TITAN record reflects that Mr. Magann paid cash dues on a quarterly basis during the period February of 1989 through January of 1991. Cash dues payments were made within the quarter in which they were due, the last such payment being made on January 29, 1991 for the months of January, February, and March 1991. Pursuant to the discussion of eligibility as to the quarterly dues payments set forth above, it is determined that Mr. Magann is eligible to run as a candidate for delegate.

B. Catherine Burke.

The TITAN record reflects that Ms. Burke paid cash dues on a quarterly basis for the period February of 1989 through January of 1991. She made timely payment of dues for each quarter during that period, having paid dues within each quarter, the requirement for good standing as determined above. As of October 29, 1990, Ms. Burke had paid dues through February of 1991. Therefore, Ms. Burke is eligible to run as a candidate for delegate.

¹The inquiry as to the eligibility of members to run, however, does not end here, and the eligibility of each member nominated and challenged by Mr. Pettit is discussed in Section III of this decision.

C. Raul Rodriguez, Jr.

The TITAN record reflects that during the period February of 1989 through and including January of 1991, Mr. Rodriguez paid quarterly dues on a cash basis. The TITAN record further reflects that Mr. Rodriguez did not pay dues for the quarter within any month of the quarter for the period July, August, and September of 1989 (dues recorded October 2, 1989), October, November and December, 1989 (dues recorded January 2, 1990), January, February and March, 1990 (dues recorded April 2, 1990), and July, August, and September, 1990 (dues recorded October 1, 1990). Mr. Rodriguez has advised the Election Office that he paid dues during the quarter for each of the quarters mentioned above. He has supplied the Election Officer with documentation showing that dues were paid as follows:

1. July, August and September, 1989 -- paid in person by check dated September 29, 1989 on that date, receipt from Local dated October 2, 1989;
2. October, November and December, 1989 -- paid in person by check dated December 28, 1989 on that date, handwritten receipt from Local dated December 28, 1989;
3. January, February and March, 1990 -- paid in person by check dated March 29, 1990 on that date, receipt from Local dated April 2, 1990; and
4. July, August and September, 1990 -- paid in person in cash on September 28, 1990, handwritten receipt dated September 28, 1990, receipt from Local dated October 1, 1990.

The Election Officer finds that Mr. Rodriguez timely paid his dues for the quarter within the quarter. Based on the above decision of the Election Officer concerning the quarterly dues payments, it is the determination of the Election Officer that Mr. Rodriguez is eligible to run as a candidate for delegate.

D. George J. Quintero.

The TITAN record reflects that Mr. Quintero paid dues on a quarterly cash basis through March of 1989, but began check-off of dues from his employer in April of 1989. The Election Office was advised that on March 21, 1989, Mr. Quintero executed a check-off authorization card.

Mr. Quintero told the Election Office that he was of the opinion that his employer would check off his quarterly dues in their entirety. However, the TITAN record reflects that on March 15, 1989, Mr. Quintero made a cash dues payment for January 1989 dues. The next payment is reflected as a dues check-off payment for February of 1989 on April, 25, 1989 and an additional cash payment for February of 1989 made on April 29, 1989.

The employer has advised the Election Officer that Mr. Quintero did have earnings in February and March of 1989. Mr. Quintero's employer also advised that when a member executes a check-off authorization card, the employer calls the Union to see what the member owes in dues and deducts all such dues from the member's next check.

Based on the determination of the Election Officer as to quarterly dues payment, Mr. Quintero's dues for January, February, and March should have been paid by March 31, 1989. Mr. Quintero signed the check-off authorization card on March 21, 1989 and had earnings in March of 1989. The employer has confirmed that normally the Local Union would have been called to determine the amount of dues owed by the member; such amount would then be deducted from the next payroll check. Apparently the employer here did not do so until April 19, 1989. However, pursuant to Article X, Section 5(c) of the IBT Constitution, a member on dues check-off whose employer fails to make a deduction during any month in which a member had earnings from which dues could have been deducted shall not lose good standing status for that month. Since Mr. Quintero had earnings in March of 1989 from which his quarterly dues could have been deducted, failure of the employer to pay those dues until a later time does not render him ineligible to run as a candidate.

The TITAN record further reflects that Mr. Quintero had late check-off dues payments for each month during the period October of 1989 through January of 1991, except for the months of January and October 1990. The employer has advised that Mr. Quintero did have earnings in each of those months. Thus pursuant to the IBT Constitution, as noted above, failure of the employer to remit on a timely basis does not affect Mr. Quintero's eligibility. Therefore, it is the decision of the Election Officer that Mr. Quintero is eligible to run as candidate for delegate.

D. Carlos R. Barnett

The TITAN record reflects that during the period February of 1989 through January of 1991, Mr. Barnett made timely payment of dues, except for the months of December of 1990 and January of 1991, both paid on February 1, 1991. Mr. Barnett is on dues check-off with his employer and his employer has confirmed that he had earnings in December and January of 1991. Pursuant to Article X, Section 5(c) of the IBT Constitution, failure of the employer to check-off and remit dues in a timely fashion does not affect a member's good standing. Therefore, Mr. Barnett is eligible to run for candidate for delegate.

E. Maria Ontiveros

The TITAN record reflects that Ms. Ontiveros did not make timely payment of dues for any month in the period February of 1989 through December of 1990. The TITAN record does not reflect that dues have been paid for Ms. Ontiveros for January of 1991; the last payment shown as received on February 1, 1991 was for December

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1990 dues. Ms. Ontiveros pays her dues via dues check-off through her employer. Her employer, Fish King Industries, has advised the Election Office that Ms. Ontiveros had earnings in every month during the period February of 1989 through the period of January 1991.

The TITAN record further reflects that Ms. Ontiveros was issued a withdrawal card on October 24, 1989, which was deposited on November 30, 1989. It is noted above that Ms. Ontiveros was working and had earnings during these months. Ms. Ontiveros has advised the Election Officer that she never requested a withdrawal card was never advised that she was on withdrawal, and worked during the months in question. The TITAN record further reflects that the Union posted dues for the months that Ms. Ontiveros was allegedly on withdrawal. Further, under the terms of the IBT Constitution, a member who is issued a withdrawal who then deposits it the following month and pays dues for both such months, all as occurred here, does not lose continuous and consecutive good standing status because of such withdrawal.

Pursuant to Article X, Section 5(c) of the IBT Constitution, a member does not lose good standing status by virtue of the employer's failure to pay check-off dues, as long as the member had earnings. However, if the Local Union notified the members of an arrearage in dues, the member has thirty days to pay such arrearage in order to cure any delinquency. The Local Union notified Ms. Ontiveros on November 30, 1989 that she was in arrears for September, 1989 dues. The TITAN record reflects that Ms. Ontiveros made a cash dues payment on December 20, 1989, pursuant to said notice. Therefore, it is the determination of the Election Officer that Ms. Ontiveros is eligible to run as a candidate for delegate.

F. Olga E. Navarrette

The TITAN record reflects that Ms. Navarrette has not timely paid her dues for any month during the period February of 1989 through January of 1991. The TITAN record further reflects that at present Ms. Navarrette's dues are paid only through November of 1990, said payment being made via dues checkoff by her employer. This two month arrearage was apparently caused by a lack of earnings in April, 1987.

The Local Union advises that Ms. Navarrette was contacted at that time and informed she should request a withdrawal card. Ms. Navarrette indicates that she was not notified that she was behind in dues. The Local further advises that in January of 1990 a notice was sent to Ms. Navarrette advising her that she was in arrears for one month. However, Ms. Navarrette states she did not receive the notice.

The IBT Constitution, however, does not require that a member be notified as to a dues arrearage when the arrearage is caused by the failure of the member to have earnings in the month from which dues could have been deducted. In that case, the member is obligated to personally remit the dues even without notice. Ms. Navarrette did not have earnings in April of 1987 and did not pay her dues for that month.

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Therefore, it is the decision of the Election Officer that Ms. Navarrette is not eligible to run as a candidate for delegate.

G. Abigail Chacon

The TITAN record reflects that Abigail Chacon took an honorable withdrawal from the Local in May of 1990 which was deposited in October of 1990. Ms. Chacon paid her dues via dues checkoff and was on medical leave of absence for the period April 13, 1990 through August 13, 1990. Since Ms. Chacon did not pay dues for the months of May, June and July of 1990, she does not meet the requirements of twenty-four months' continuous good standing without withdrawal. Therefore Ms. Chacon is not eligible to run as a candidate for delegate.

H. James Hermon

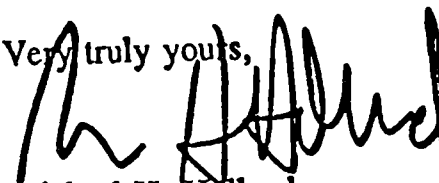
Mr. Hermon has advised the Election Officer that he has withdrawn as a candidate for delegate. The Election Officer accepts Mr. Hermon's withdrawal and therefore any challenge to his eligibility is declared moot.

IV. Conclusion

Based on the foregoing, it is the determination of the Election Officer that the protest of Mr. Rodriguez and Ms. Burke is **GRANTED** to the extent set forth in Section II above. The protest of Mr. Pettit is **GRANTED** as to the eligibility of Abigail Chacon and Olga Navarrette and is **DENIED** as to Carlos Barnett, Raul Rodriguez, George Quintero, Catherine Burke, Maria Ontiveros, Douglas Magann and James Hermon.

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

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MHH/mca

cc Frederick B Lacey, Independent Administrator
Geraldine L Leshin, Regional Coordinator

~~3/11/91~~ ~~usual copy~~

X MTH
LASHIN

91 - Elec App. - 94 (SA)

IN RE:

WALTER PETITT,
Complainant,
and
GEORGE QUINTERO, et al.
Respondents.

DECISION OF THE
INDEPENDENT
ADMINISTRATOR

630/CLA
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This matter arises from an appeal of a March 4, 1991, ruling of the Election Officer in Case Nos. ~~E-500-2063-CLA~~ and E-243-LU630-CLA. A hearing was held before me by way of teleconference on March 11, 1991, at which the following persons were heard: Barbara Hillman, on behalf of the Election Officer; Robert Vogel, an attorney on behalf of Local 630; Jerome L. Vercrease, Secretary-Treasurer of Local 630; Kurt Larsen, Divisional Director of Local 630; Walter Petitt, the complainant; and the respondents, George Quintero, Douglas Magaña, Raul Rodriguez, Catherine Burke, and Carlos Barnett (represented by Glen Rothner, Esq.).

At issue is Local 630's contention that its Bylaws provide for quarterly dues payments. The Local contends that quarterly dues have been a policy of Local 630 since 1947, and that the membership is fully informed of the requirement that to be in good standing, dues must be paid in the first month of each quarter. The Local contends that Douglas Magaña, Catherine Burke, Paul Rodriguez, and George Quintero are ineligible to run as candidates for the position of delegate or alternate delegate to the 1991 IBT

International Convention since they did not pay quarterly dues on a timely basis for the twenty-four month period preceding the nominations meeting. The nominations meeting took place in February of 1991.

The relevant provisions of Local 630's Bylaws provide, in pertinent part, as follows:

Section 16(C)

(1) Every member whose dues are paid up through the month which is prior to the month in which the nominations or election is held shall have the right to nominate, vote for, or otherwise support the candidate of his choice ...

(2) Every member in good standing by the payment of his dues on or before the last business day of the current month in accordance with the International Constitution, and who has been in such continuous good standing for each consecutive month in the twenty-four month period immediately prior to nominations ... shall be eligible to hold office, if he is otherwise qualified.

Section 17(A)

The regular monthly dues are, and shall continue to be, governed by the provisions of Article X of the International Constitution.

Section 19(B)

(1) A member shall lose his good standing membership in the organization ... by nonpayment of dues on or before the last business day of the first month of the current quarter.

Article X, Section 5(d) of the IBT Constitution provides as follows:

A Local Union may provide in its Bylaws for the payment of quarterly dues, provided such Bylaws are approved by the General President of the International Union. In any instance where the Local Union has provided for the payment of quarterly dues under this section, a member, to be in good standing for each month of the quarter, must pay his dues for each quarter on or before the last business day of the first month of the quarter.

The Election Officer concludes that the Local's Bylaws do not, as required by Article X, Section 5(d) of the IBT Constitution, provide for the payment of quarterly dues. As noted by the Election Officer, the "dues provisions of the Bylaws [Section 17] does not in any paragraph discuss the payment of quarterly dues. Further, not all members in the Local are required to pay dues on a quarterly basis. Those members on dues check-off with their employer pay dues on a monthly basis."

In addition, as stated by the Election Officer in his Summary:

The provision of the Bylaws which sets forth eligibility to run as a candidate also does not provide for the payment of quarterly dues. Instead it provides that every member whose dues are paid up through the month which is prior to the month in which nominations or elections are held shall have the right to nominate, vote for, or support the candidate of his choice. This Bylaw provision further provides that every member in good standing by the payment of his dues on or before the last business day of the current month, in accordance with the International Constitution, and who has been in such continuous good standing for each consecutive month in the twenty-four month period immediately prior to nomination, shall be eligible to hold office.

As further noted by the Election Officer, the only portion of the Bylaws which discusses quarterly dues is that portion entitled "Membership" found at Section 19(B). That section states that a member would lose his good standing by non-payment of dues on or before the last business day of the first month of the quarter.

Relying on the policy of the Local not to accept partial cash payments of quarterly dues,¹ the Election Officer concluded that

¹ Although there was some dispute at the hearing, I adopt the Election Officer's finding that the policy of the Local Union is to refuse to accept any partial payment of quarterly dues. Thus, a
(continued...)

so long as a member paid his/her quarterly dues during any part of a quarter, he/she would be deemed in good standing to participate in the election process. Following this methodology, the Election Officer made his eligibility determinations relevant to this matter. The Local does not challenge the fact that the Election Officer properly applied his methodology, instead, the Local attacks the Election Officer's approach.

Initially, the Local argues that the Election Officer's determination would serve to disenfranchise those members of the Local who believed they were ineligible to participate in the election process because they may have been delinquent in their dues under the "quarterly dues" system, i.e., payment on or before the last day of the first month of the quarter. Particularly, the Local argues that certain members who may be eligible to vote under the Election Officer's methodology may not vote believing that under a quarterly dues payment system, they are not eligible.

In response to this argument, two observations are in order. First, the Local has not offered anything, but mere suspicion, that any member has been disenfranchised. To the contrary, the significant number of respondents subject to this appeal

¹(...continued)

member who is a cash dues payer, must pay his/her entire quarterly dues payment at one time. If the payment is made in the second month of the quarter, a one dollar fine is imposed. This fine is raised to two dollars if the payment is not made until the third month. Apparently, the Local, in some instances where a particular member is particularly adamant, will accept a partial payment of quarterly dues. As a general rule, however, the Local will refuse such partial payments.

demonstrate that members are vigorously pursuing their eligibility under the methodology set forth by the Election Officer.

Second, the Election Officer notes that the voting for this Local will take place via mail ballot. The Election Officer indicated that as part of that mail ballot, a notice may be included referencing the Election Officer's ruling "that any member who has paid his/her dues through December 1990, the last month of the prior quarter, shall be eligible to vote in the March 1991 election for delegate and alternate delegate."

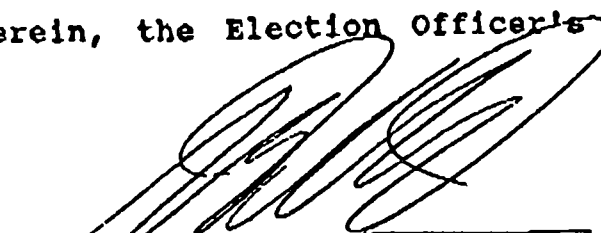
The Local further argues that the "good standing" provision regarding the payment of dues on or before the last business day of the first month of the quarter found in Section 19(B) of the Bylaws, qualifies the eligibility requirements found in Section 16(C). This is the key to the Local's position. A plain reading of the Bylaws, however, belies the Local's argument. Section 16(C) clearly contemplates eligibility in the context of monthly dues payment.

It is impossible to harmonize the provision regarding "good standing" found in Section 19(B) with the clear provisions regarding eligibility found in Section 16(C). Section 16(C), unambiguously, contemplates the payment of dues on a monthly basis. Moreover, as the Election Officer observed, Section 17 of the Bylaws -- the very provision regarding the payment of dues -- makes no mention of a quarterly dues requirement. In fact, that provision speaks of "regular monthly dues." Even more telling is the fact that the provisions of Section 19(B) do not apply to those

on dues check-off. Thus, only those members who pay their dues on a cash basis are subject to the restrictions of Section 19(B). Certainly, it cannot be said that the Bylaws link the payment of a quarterly dues to election eligibility.

Given these ambiguities in the Bylaws, I refuse to find the respondents ineligible based upon their failure to pay dues on a quarterly basis.

For the reasons expressed herein, the Election Officer's ruling is affirmed.²



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

Dated: March 13, 1991.

² Regarding the issue of the Local's compliance with the IBT Constitution, the Election Officer states that "even assuming the Bylaws provide for quarterly dues payments, no evidence was submitted to show approval by the General President of the IBT of the Bylaws, which under the IBT Constitution [Article X, Section 5(d)] is a prerequisite to utilizing a quarterly dues system." In response to this, the Local argues that while it has no documentation, Section 19(B) of its Bylaw's was approved by the General President some time in the early 1960's. The Local further suggests that the burden was on the Election Officer to contact the International to obtain documentation of the Bylaw's approval. The issue of whether or not the Local's Bylaws were ever approved by the General President need not be reached, given my conclusion that the Bylaws do not link eligibility to participate in their election process to the payment of quarterly dues on or before the last day of the first month of the quarter.