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February 25, 1991

VIA UPS OVERNIGHT

Robert McGinnis
6319 S Lavergne
Chicago, IL 60638

William Joyce
Secretary-Treasurer
IBT Local Union 710
4217 S Halsted St
Chicago, IL 60609

Re: Election Office Case No. P-539-LU710-CHI

Gentlemen

A pre-election protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") Complainant, Robert McGinnis, protests campaign literature distributed by William Joyce, Secretary-Treasurer of Local Union 710, as well as the fact that the material was published by Progress Printers Complainant McGinnis further protests the awarding of a contract by the Election Officer to Progress Printers to print election return envelopes and other materials The Election Officer has investigated Complainant's allegations and the investigation has disclosed the following

Complainant has attached several exhibits in support of his protest Examination of the exhibits reveals it is literature put out by the "Wm 'Bill' Joyce Slate " Complainant characterizes these materials as "smut " Examination of the materials does reveal that they contain commentary generally disparaging of contending delegates, slates and organizations that Mr Joyce perceives to be his political opponents

Progress Printing is implicated by Complainant McGinnis through the appearance of its printing mark, "638" on these materials Complainant McGinnis contends Progress Printing is culpable in the dissemination of "smut" by printing the Joyce Slate campaign materials

Complainant also complains that the Election Officer has contracted with a company like Progress Printing that would agree to print the offending Joyce Slate material Complainant McGinnis finds Progress Printing qualification further besmirched because it has printed campaign material for "Friends of ROTI Inc " an alderman of the City of Chicago, who was subsequently indicted

The overarching purpose of the *Rules* is to provide a framework to assure the fair and free election of delegates and alternate delegates to the Convention. Contestants are generally allowed to make whatever assertions, allegations, statements of opinion or even of alleged fact without legal sanctions for their truth or falsity. The cardinal principal is that the best remedy for untrue speech is more free speech with the voter being the final arbiter. The *Rules* are rigorously enforced to ensure that all contestants will have an equal and fair opportunity to disseminate their message and to answer opposing materials they believe to be untrue.

The Election Officer has consistently rejected protests that have sought to put him in the position of evaluating the content or in any way censoring messages contained in campaign literature. The policy of encouraging robust political debate in the selection of delegates and International officers of the IBT is reflected in the *Rules'* prohibition against the censorship of campaign literature. Thus, the fact that campaign literature allegedly contains false, irrelevant or even defamatory information does not remove it from the protection of the *Rules*. This rule is fully consistent with the rulings of the United States Supreme Court and Federal Court of Appeals with respect to the regulation of speech generated during labor union elections. National Association of Letter Carriers v Austin, 418 U S 264 (1974) (uninhibited and robust debate encouraged in labor matters, even allegedly defamatory statements are permitted), Salzhalder v Caputo, 316 F 2d 445 (2nd Cir 1963) (statements critical of local union officials even if incorrect protected). See *Rules*, Article VII, § 6 (g). Accordingly, Complainant McGinnis' protest as it relates to content of campaign materials disseminated by William Joyce Slate is DENIED.

The same result must follow with respect to Complainant's objections to the fact that Progress Printing has printed these materials. The same restrictions on censorship of content of materials applies to Progress Printing. Indeed, were Progress Printing to attempt to censor or withhold services from any candidate because of the content of the campaign literature, it would itself be acting contrary to the *Rules*. In fact, in a recent case, the Election Officer upheld a protest because a printer had acceded to objections lodged by Local Union officers to his printing of an opposing slate's campaign materials with the IBT logo. See Election Officer Case No P-513-LU401-PHL.

Progress Printing is an established printing firm with long experience and expertise in printing campaign and election materials for a wide spectrum of political labor and community organizations in the Chicago area. Any attempt to restrict the availability of printing services based upon censorship of the content of materials would do great damage to the ability of all contending forces to disseminate their message to the electorate. Accordingly, Complainant McGinnis' protest is DENIED.

Complainant McGinnis also complains that Union funds have been misused by the William Joyce slate. In support of this allegation he has submitted a Local 710 notice to all Local 710 members printed on Local 710 letterhead with the IBT logo on it. The *Rules*, Article X, § 1 (b)(3) do prohibit campaign literature from being printed on the

Robert McGinnis
Page 3

Union's official stationery with the Union's logo on it. Conversely, the *Rules* do not prohibit use of the logo on campaign literature that is not printed on Union stationery. See Election Officer Case Numbers P-226-LU182-PGH (affirmed by the Independent Administrator in 91-Elec App -40) and P-513-LU401-PHL.

Examination of Complainant McGinnis' exhibit readily discloses, however, that the document is not campaign material related to the election occurring under the *Rules*. It is a communication to members of Local 710 with respect to a proposal to change Local 710 bylaws. These events occurred several years before the *Rules* even came into existence. Complainant McGinnis' own allegations reference the fact that this literature was cited in connection with Federal District Court case filed in 1983. Accordingly, Complainant McGinnis' protest on this point 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
Julie E. Hamos, Regional Coordinator