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March 11, 1991

**VIA UPS OVERNIGHT**

Thomas J Smarth  
R R 3 Box 775  
Highland Lakes, New Jersey 07422

Frank Cannon  
247 Court Avenue  
Lyndhurst, New Jersey 07071

Mario Perrucci  
Secretary-Treasurer  
IBT Local Union 177  
282 Hillside Avenue  
Hillside, New Jersey 07205

**Re: Election Office Case No. P-540-LU177-NJE**

Gentlemen

A pre-election protest was filed pursuant to Article XI, Section 1 of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") In the protest, Mr Thomas J Smarth and Frank Cannon allege that the *Rules* have been violated because (1) material in support of their campaign for delegate has been removed from Union and general purpose bulletin boards at U P S facilities, (2) a large number of Local 177 members received notices from the Local Union 177 Office informing them that their dues were delinquent, (3) Local Union officials campaigned on Union time, and used Union cars to engage in such campaigning, and (4) Mario Perrucci, Secretary-Treasurer of Local 177, used the Local's attorney and secretary in prosecuting a protest against Frank Cannon

The investigation shows the following: Cannon and Smarth are delegate candidates running on the Rank-and-File Slate They attempted to post their campaign literature on the bulletin boards at United Parcel Service ("UPS") The literature was removed The evidence shows and the protesters admit that the bulletin boards at the UPS sites in question are not general purpose bulletin boards UPS has strictly enforced a rule prohibiting postings of other than official Union or company notices on all bulletin boards The evidence shows that UPS has consistently removed any postings other than such official postings from all bulletin boards at its New Jersey facilities

The *Rules* do provide that IBT members have the right to post campaign materials on general purpose bulletin boards, or on any bulletin board which has become a general purpose board by reason of its having been used for postings in addition to or other than

official company or Union business in the past *Rules*, Article III, Section 10 The bulletin boards at issue in this case, however, have not been used for other than official postings Therefore, since IBT members have no pre-existing right to post campaign materials on the bulletin boards at these UPS facilities, UPS is not now required by the *Rules* to permit campaign postings Thus, this aspect of the protest is **DENIED**

The protestors object to a mailing made to members notifying them of delinquent dues The Election Officer finds nothing objectionable, and in fact, encourages the Local Union's efforts to notify members of their dues arrearages. Such notice, by informing members of the dues delinquency permits the members to pay such arrearages and thus become eligible to participate in the election process. This aspect of the protest is **DENIED**

Mr Cannon identified Local Union 177 officers, Howard Kahn, Richard Carmunchio, Gerard Cevello, Dan Raimondo and Ray Milligan as members of the Ron Carey Slate, who campaigned on Union time on February 12, 1991 at the Meadowland facility of UPS He also claims they arrived and departed in Union vehicles He was not able to identify any witnesses to corroborate his observations.

Each member identified by Mr Cannon was interviewed by the Election Officer's representative Each denied campaigning at the Meadowlands facility on February 12, 1991 However, as a group they did distribute literature on February 6, 1991 at that UPS facility, but state that they were on personal time while campaigning They also state that they traveled in Dan Raimondo's personal automobile, rather than in Union owned vehicles

The Election Officer concludes that there is insufficient evidence to establish that the *Rules* prohibiting campaign activity on Union paid time or with Union finances have been violated This aspect of the protest is **DENIED**

Cannon and Smarth also allege that Local 177's attorney and secretary assisted in the filing and processing of a protest in furtherance of the campaign activities of their opponents The evidence shows that Local 177's attorney, Victor Parsonett, participated in an appeal of the Election Officer's decision denying a protest of Cannon's eligibility to seek election as a delegate to the 1991 IBT International Convention (Election Office Case No E-195-LU177-NJE) The evidence does not show that the Local 177 Secretary, Elaine Schaffer, assisted with preparing any aspect of the protest or appeal The *Rules* do prohibit the use of Union funds in the form of personal services or otherwise for the purpose of campaigning *Rules*, Article X However, the *Rules* do not prohibit the Local from employing its or using other Local Union personnel in furtherance of the protest and appeal process except where the use of such resources is in support of a particular candidate or group of candidates as opposed to furthering the interests of the Local as an entity

In this case Local 177's attorney participated in the appeal before the Independent Administrator of the Election Officer's determination that Mr Cannon was eligible to

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run for delegate to the 1991 IBT International Convention. One of the issues presented in that appeal was whether or not the Local's procedure for notifying members of dues arrearages was reasonable. Also at issue was the Local Union's interpretation of its obligation under Article X, Section 5(c) of the IBT Constitution to notify a member of late dues payments.


At the outset of the hearing, Mr. Parsonett stated that he was appearing only on behalf of the Local. His participation in the hearing was confined to explaining the Local's notification policy and procedure and the Local's position with respect to the proper interpretation of Article X, Section 5(c) of the IBT Constitution. The Election Officer concludes that the participation of Mr. Parsonett was on behalf of the Local as an institution, rather than as the representative of any member. That he may have been compensated from the Local's treasury this does not violate the *Rules*.

Additionally, Cannon failed to file this protest within the forty-eight hour time limit set forth in Article XI, Section 1(a)(1) of the *Rules*. The hearing on the appeal of the Election Officer's eligibility determination was held on January 30, 1991. Following the hearing, Mr. Cannon told Adjunct Coordinator Larry Turner that he objected to the participation of Mr. Parsonett. Mr. Turner advised him to file a protest and also advised him to do so within forty-eight hours. This protest was not filed, however, until February 20, 1991.

Based on foregoing this aspect of 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  
Edward T. Ellis, Regional Coordinator