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March 11, 1991

VIA UPS OVERNIGHT

Howard D Burgan
9043 North 36th Drive
Phoenix, Arizona 85051

W Terry Moser
Secretary-Treasurer
IBT Local Union 104
1450 South 27th Avenue
Phoenix, Arizona 85009

Re: Election Office Case No. P-565-LU104-RMT

Gentlemen

Howard D Burgan filed this pre-election protest pursuant to Article XI, Section 1 of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") Mr Burgan states that he asked Mr W Terry Moser, Secretary-Treasurer of Local Union 104 for permission to post campaign literature on the bulletin boards in Local 104's office Mr Moser refused, stating that there are no general purpose bulletin boards in the Local's office. Mr Burgan alleges there are such general purpose bulletins in the Local's office If there is no general purpose bulletin board, then Mr Burgan asks to be provided with one to post campaign materials

The Election Officer's representative made an unannounced visit to the Local Union office on February 27, 1991 The Local Union Hall contains six bulletin boards One is near the reception desk to the office Said bulletin board contained numerous pictures of Local 104 members receiving pension checks, and a variety of official Union notices. The bulletin board also had posted a newspaper article discussing the possible purchase by an employer, which employs Local 104 members, of another employer, which had employed Local 104 members before going out of business

The Hiring Hall contained two bulletin boards One is in the Hiring Hall proper, the other is in a staff office which adjoins the Hiring Hall With the exception of one newspaper article and a missing child poster, all notices on both bulletin boards related directly to Union functions or required Election Officer postings, e g , the Local Union Election Plan Summary, Hiring Hall Rules, notices regarding commercial driving licenses, apprenticeship programs directed to Union staff The newspaper article concerned the construction of a new dam, the construction of which is being performed in part by Local 104 members

In the area where members pay their Union dues, there are two bulletin boards. And with the exception of a "legislative wrap-up" of the National Council of Senior Citizens, Washington, D C relating to legislative initiatives supported by the IBT, all notices posted on these boards are official Union notices, postings required by the *Rules*, or items pertaining to Union business, such as commercial driving licenses test notices.

In the business office, the area where Local Union employees such as clerical employees work and have their desks, there is an employee bulletin board. Although this bulletin board contained general postings, it is reserved for use by Local Union employees only and is not accessible to members coming to the Local Union Offices to transact Union business.

In addition to the bulletin boards, there is a 12" foot counter and counter ledge in the entrance area of the hall, near the switch board operator/reception desk. That counter contained various political materials and flyers concerning the sale of raffle tickets by organizations other than the IBT.

Article VIII, Section 10(d) provides that "no restrictions shall be placed upon candidates' or members' pre-existing rights to use employer or Union bulletin boards for campaign publicity. Similarly, no restrictions shall be placed upon candidates' or members' pre-existing rights to solicit support, distribute leaflets or literature, conduct campaign rallies, hold fund-raising events, or engage in similar activities on employer or Union premises. Such facilities and opportunities shall be made equally available on the same basis to all candidates and members."

The "Advisory Regarding Political Rights", issued by the Election Officer on December 28, 1990, stated that "neither the Union nor the employer can change or limit bulletin board usage. Thus, where a bulletin board on the Union or employer's premises has been used to post materials, other than or in addition to, official Union or employer notices, and even though such other postings never included campaign postings, IBT members have the right to use the bulletin board for campaign postings, subject to the regulations previously applied to "general purpose" postings, such as the length of time the material may remain posted, the dimensions of the posting, and the like. Helton v. N L R B, 656 F 2d 883 (D C Cir 1981), ABF Freight System v N L R B, 673 F 2d 229 (8th Cir 1989) "

Here the evidence is that materials posted on all but one of the bulletin boards at the Union's Hall were limited to materials directly relating to official Union business, the activities of Local Union members, or information about public elections or legislative activities which were sanctioned by or in which the IBT or Local 104 participated. Thus, these bulletin boards are found to be boards dedicated to official business. They are not general purpose bulletin boards and thus the Union is not required to make them available for campaign postings.

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The one bulletin board which is a general purpose bulletin board is for use by Local Union employees only. It is not used for posting by Local Union members. Further, it is not located in an area where members participating in the election process are likely to see it. Thus, there is no requirement that Union members be permitted to utilize such bulletin board for posting of campaign materials.

However, the counter and counter ledge found in the area of the switchboard operator/reception desk contains materials unrelated to Local Union sanctioned activities or official notices. While not technically a bulletin board, it has apparently been used as a "forum" dedicated to general purposes. Thus, under Article VIII, Section 10 of the *Rules* and in accord with the principles enunciated in the Advisory on Political Rights, Local Union members have a right to place campaign literature on this ledge.

Thus to the limited extent noted above, the protest is **GRANTED**. Mr. Burgan and all other Local members shall be permitted to use the receptionist area ledge for posting and distribution of campaign materials.

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/ads

cc Frederick B. Lacey, Independent Administrator
Bruce Boyens, Regional Coordinator