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March 4, 1991

VIA UPS OVERNIGHT

Mark Vandak
479 East North Street
Worthington, Ohio 43085

Anheuser-Busch
700 East Schrock Road
Columbus, Ohio 43229

Harold Speakman
President
IBT Local 284
555 East Rich Street
Columbus, Ohio 43215

Re: Election Office Case No. P-572-LU284-CLE

Gentlemen

A pre-election protest has been 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 his protest, the complainant, Mark Vandak, alleges that members of the Powell/Finnerty slate distributed literature the contents of which were violative of the *Rules*

The first alleged impropriety is the use of the name of Ray Finnerty on the slate name and in the literature, it is contended that this was unfair since Mr Finnerty was not on the slate and was a former President of Local Union 284 for 12 years and up until 1989 The second alleged impropriety is the use of a marked up copy of the Election Officer's decision in a previous case involving the Union and Mr Powell, it is contended that since this decision was partially unfavorable to the Union, there is an unfair inference that election officials involved in the decision¹ were supporting Mr Powell

¹This case involved a consolidation of a protest filed by Mr Powell (P-430-LU284-CLE) and a protest filed by Sandra May (P-407-LU284-CLE), a member of his slate The Election Officer sustained three charges of *Rules* violations involving use of the Local's resources One of those findings was overturned on appeal by the Independent Administrator See 91 - Elec App - 81 (SA)

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The documents in question are campaign literature. The fact that they may contain unfair, false, irrelevant or even defamatory material information or inferences does not remove them from the protection of the *Rules*. National Association of Letter Carriers v Austin, 418 U S 264 (1974). The policy 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. See *Rules*, Article VIII, Section 6(g).

The *Rules* do not regulate the choice of a slate name, provided that the Slate name does not denote incumbency, is not obscene, or is not too long to fit on the ballot. Use of Mr Finnerty's name in the name of the slate does not denote incumbency, is not obscene, nor does it make the slate name too long. Further, Mr Finnerty, while not himself a candidate, does not object to the use of his name in the slate name. Therefore, the use of Mr Finnerty's name in the slate name does not violate the *Rules*.

For the reasons shown above, the Election Officer finds that the Election Rules were not violated by the members of the Powell-Finnerty slate as a result of their distribution of the materials in question or their use of Mr Finnerty's name.

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
Joyce Goldstein, Regional Coordinator