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March 8, 1991

**VIA UPS OVERNIGHT**

William Oxner  
3002 Cherry Rd  
Memphis, TN 38118

Bill Owens  
Secretary-Treasurer  
IBT Local Union 667  
796 E Brooks Ave.  
Memphis, TN 38116

Re: Election Office Case No. P-576-LU667-SOU

Gentlemen

A pre-election protest was filed by William Oxner pursuant to Article XI, § 1 of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules") Mr Oxner contends that Local 667 by its Secretary-Treasurer, Bill Owens, issued him a withdrawal card in February of 1991 and refused to accept his tender of Union dues for February of 1991 Mr Oxner states that he should not have been issued a withdrawal card and the issuance of the same will prevent him from voting in the upcoming elections for delegates to the IBT Convention and for International Officers<sup>1</sup>

The investigation conducted by the Election Officer revealed that Mr Oxner was employed by Roadway Express until June of 1990. The TITAN record reflects that through June of 1990, Mr Oxner's dues were paid via dues checkoff. From July of 1990 through January of 1991, Mr Oxner made cash dues payments for each month Mr Oxner tendered his dues to the local for February but they were refused The local had issued a withdrawal card to him on February 8, 1991

Mr Oxner has advised the Election Office that in June of 1990, he was discharged from his employment with Roadway He filed a grievance concerning his discharge which resulted in a decision adverse to him on August 1, 1990 On January 28, 1991, Mr Oxner instituted a law suit in the United States District Court for the Western

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<sup>1</sup>While the delegate election for Local 667 has been completed and Mr Oxner's vote did not affect the outcome of that election, this protest is not moot since the election of International Officers has not concluded

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District of Tennessee concerning his dismissal from Roadway and bearing the case number 91-2079-HB On February 8, 1991, the Local Union by its Secretary-Treasurer, Bill Owens, issued a withdrawal card to Mr Oxner contending that the card was issued due to the fact that Mr Oxner had not worked at the craft for six months

Mr Oxner has also advised the Election Officer that he has obtained employment as of October of 1990 with Contract Freighters, Inc., a trucking firm located in Joplin, Missouri Contract Freighters is a non-union employer. The Local Union has advised the Election Office that while it has no documentary materials defining its jurisdiction, it agrees that it represents over the road, i e , long haul, drivers.

*Article VI, §1(a)(1)* of the *Rules* provides that in order to be eligible to run for delegate or alternate delegate to the IBT International Convention, a member must be in continuous good standing with his Local Union, with his dues paid to the Local for a period of twenty-four (24) consecutive months prior to the month of nomination for said position with no interruptions in active membership due to suspensions, expulsions, withdrawals, transfers or failure to pay fines or assessments and be employed at the craft within the jurisdiction of the Local for a period of twenty-four (24) consecutive months prior to the month of nomination Section 2(b) of Article VI provides that the active employment at the craft requirement may be excused by unemployment, assuming that the member was actively seeking and available for employment in the craft and not working outside the craft during such periods of unemployment, or by active pursuit of an unresolved grievance or other legal action challenging suspension or discharge

These rules do not apply directly to the situation presented by this protest in that Mr Oxner is not seeking to run for delegate However, the *Rules* are applicable to the extent that they define what constitutes good standing status for a member enabling such member to run for delegate, the good standing status is required for a member to vote in the delegate and International elections is a less stringent standard requiring only that the member be in good standing at the time he casts his vote

Under the rules quoted above, it is clear that Mr Oxner is in fact eligible to vote Although he was dismissed from his employment in June of 1990, he continues to pursue legal action challenging his dismissal He has also continued to pay his dues to the Local Union until such time that the tender of dues was refused in February of 1991 It is the determination of the Election Officer that the refusal to accept his dues by the Local Union does not render Mr Oxner ineligible to vote or affect his good standing status

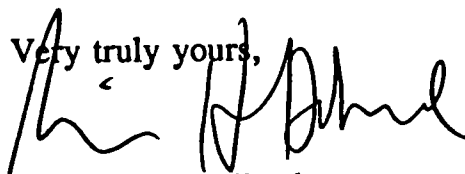
Further, although Mr Oxner is not employed by an employer that has a collective bargaining agreement with the Local, he is employed at the craft Merely because the employer does not have a collective bargaining agreement with the Local, or with any union, does not require a finding that Mr Oxner is not employed at the craft It should be noted that Mr Oxner has advised the Election Officer that he has sought work with employers within the jurisdiction of Local 667 that have collective bargaining agreements with the Local, but has not been successful in obtaining such employment In

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accordance with the decision of the Election Officer in Case No E-112-LU200-NCE, Mr Oxner's employment by Contract Freighters, Inc is considered to be employment at the craft

Accordingly, the protest of Mr Oxner is GRANTED The Local Union is hereby ordered to accept Mr Oxner's tender of dues and to rescind the issuance of the withdrawal card Assuming Mr Oxner continues to meet the requirements of the *Rules*, as set forth herein, he will be eligible to vote in the International Officer election<sup>2</sup>

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  
Larry R Daves, Regional Coordinator

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<sup>2</sup>The delegate election tally was held on March 4, 1991 Regardless of any determination at that election as to the validity of Mr Oxner's ballot, which he advised the Election Officer was mailed, it is the determination of the Election Officer that the protest is not moot, in that there is an upcoming election for International Officers, in which this issue may again arise

IN RE:

WILLIAM OXNER,

Complainant,

and

BILL OWENS,  
IBT LOCAL UNION NO. 667

Respondents.

91 - Elec. App. - 98 (SA)

DECISION OF THE  
INDEPENDENT  
ADMINISTRATOR

This matter arises out of an appeal from a March 8, 1991, decision of the Election Officer in Case No. ~~91-98-1115-1300~~. A hearing was held before me by way of telephone conference on March 13, 1991, at which the following persons were heard: Bill Owens, Secretary-Treasurer of Local 667; Howard Paul, Local 667's attorney; John J. Sullivan, on behalf of the Election Officer; and Lary Daves, the Regional Coordinator.

The complainant, William Oxner, a member of Local 667 and a former employee of Roadway Express Company ("Roadway"), contends that he meets the requirements for retaining membership in good standing in his Local Union despite the fact that he lost his job with Roadway. Mr. Oxner contends that his good standing continues because he has been employed at the "craft," albeit with a non-union employer, and has been actively seeking work with employers

which have contracts with Local 667 since his discharge. In addition, he has filed a lawsuit, which is currently pending, to challenge his discharge from Roadway. See, e.g., Rules For The IBT International Union Delegate And Officer Election (the "Election Rules"), Article VI, Section 1.a.(1); 2.b. See also In Re: Frugger, 90 - Elec. App. - 25 (SA).

The Local contends that it properly issued Mr. Oxner a withdrawal card on February 1991, and thereafter properly refused to accept his dues because his work for a non-union employer does not satisfy the "working at the craft" requirement.

The Election Officer determined that Mr. Oxner had maintained his membership in good standing and, thus, directed the Local Union to accept Mr. Oxner's tender of dues for February and to retract his withdrawal card. The Local appealed.

The merits of this appeal need not be reached. I accept the Local's claim that Mr. Oxner's protest is untimely. Mr. Oxner was issued a withdrawal card on February 8, 1991, and did not file a protest until February 25, 1991. Article XI, Section 1.a.(1) of the Election Rules, provides that protests, such as Mr. Oxner's, "must be filed within forty-eight (48) hours" of the offending conduct or said protest "shall be waived." (Emphasis supplied.) Mr. Oxner's good standing was terminated upon the issuance of the withdrawal card on February 8, 1991. Thus, Mr. Oxner should have filed his protest within forty-eight hours thereafter. He did not.

The Election Officer suggests that the Local's refusal to accept Mr. Oxner's tender of dues in February and its continued

refusal to accept Mr. Oxner's dues thereafter is a continuing violation from February 8, 1991, forward.

Mr. Oxner's first tender of dues following the issuance of the withdrawal card occurred on or about February 13, 1991. The Local refused that tender. Even if we were to use the Local's first refusal to accept Mr. Oxner's dues as the cut off date, his protest should have been filed on or before February 15, 1991. To accept the Election Officer's suggestion that the Local's alleged violation here is a "continuing" violation because it continued to refuse to accept Mr. Oxner's dues, is to ignore the time limitations set forth in the Election Rules in any instance where the protest involves the issuance of a withdrawal card and a refusal to accept Union dues. There is no basis to carve out such an exception for those in Mr. Oxner's position.<sup>1</sup>

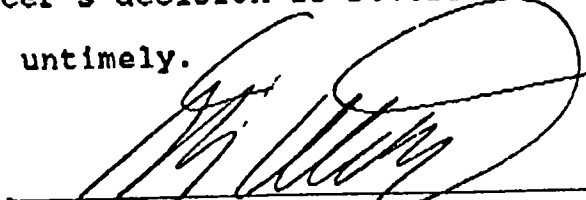
In finding Mr. Oxner's protest untimely, I am not unmindful of the fact that what is at issue here is the right of Mr. Oxner to vote in the delegate election. That election has already taken place, however, and the Election Officer acknowledges that Mr. Oxner's vote would not have affected the outcome of that election. Mr. Oxner's right to vote in the International elections in

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<sup>1</sup> In In Re: Golubovic, 91 - Elec. App. - 73 (SA) at p. 7, n.3, it was held that a Local's delay in permitting the proper inspection of collective bargaining agreements was appealable any time during the period of delay. In that case, however, during the period of delay, the Local was attempting to cure the complainant's concerns. The forty-eight hours to file a protest began to run when the Local ultimately complied with complainant's request. Here, the Local's position on Mr. Oxner's membership status was clear and final upon the issuance of the withdrawal card to Mr. Oxner.

December of 1991 is admittedly still in flux. While a single member's right to vote in the International election is indeed a significant right, I do not, under these circumstances, find it necessary to waive the Election Rule's time restrictions regarding protests to "insure fair, honest and open elections." Election Rules, at p. 2.<sup>2</sup>

Accordingly, the Election Officer's decision is reversed and Mr. Oxner's protest is dismissed as untimely.



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

Dated: March 15, 1991.

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<sup>2</sup> If Mr. Oxner obtains work within Local 667's jurisdiction prior to the International election, and pays his dues, he will be entitled to vote in that election.