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Michael H Holland
Election Officer

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Chicago, IL 60604
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March 7, 1991

VIA UPS OVERNIGHT

Thomas A Warner
5559 Country Heights Ct.
Colorado Springs, CO 80917

Derl Forbis
President
IBT Local Union 961
3245 Eliot St.
Denver, CO 80211

Re: Election Office Case No. P-588-LU961-RMT

Gentlemen

Thomas Warner filed this pre-election protest pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules") Mr Warner's protest was faxed February 27, 1991 to the Election Officer.

In his protest, Mr Warner alleges that he was nominated and seconded by mail to be a candidate for delegate to the International Convention from Local Union 961. He further states that he accepted the nomination in writing. He contends that the written nomination, second and acceptance were all appropriately mailed to the Local Union office, United States mail, return receipt requested. The ballot for the delegate and alternate delegate election for Local 961 does not list him as a candidate

The Local 961 nominations meeting was conducted on January 27, 1991 and was supervised by Mr Bruce Boyens, Regional Coordinator. At the outset of the meeting, Mr Boyens discussed the nomination process and explained the *Rules* with respect to that process. He informed all Local 961 members present that they were permitted and encouraged to interrupt the proceedings at any time if they or any of them felt that there was any impropriety or if the procedures, as Mr Boyens had explained them were not followed.

Prior to the nomination meeting, Mr Boyens received from Local Union Officers, the nominations, seconds, and acceptances of all members who had, in writing, either nominated a delegate or alternate delegate candidate, seconded the nomination of a delegate or alternate delegate candidate or accepted the position of delegate or alternate delegate. Mr Warner's nomination, second or acceptance was not received. Neither

Thomas A Warner
Page 2

his nomination, the second to his nomination nor his acceptance of nomination were announced at the meeting.

At the conclusion of the delegate nominating process, Mr. Boyens announced to all members in attendance the names of all members who had been nominated for the delegate position, including those nominated in writing and those nominated at the meeting. Mr Warner's name was not among those announced. Mr Warner does not dispute Mr. Boyens recollection that Mr. Warner's name was not announced as a delegate candidate, Mr Warner, who attended the nominations meeting, states that he cannot recall whether his name was announced or not at the nominations meeting.

At the conclusion of the nomination meeting, Mr. Boyens told all members present that the nominees should, immediately after the meeting, give their names and addresses to the Local. Mr Boyens stated that he would send all nominees a letter giving the time and place for the lottery drawing to determine ballot placement.

At the conclusion of the meeting, Mr Warner did in fact give his name and address to the Local Union. When the Local transcribed and submitted the names and addresses to Mr Boyens, it omitted Warner's name, the Local Union understood Mr Warner not to have been nominated as a delegate candidate, based on the content of the nominations meeting. Mr. Boyens did not send Mr Warner any notice of the lottery for ballot placement.

Subsequent to the filing of this protest, a search was conducted of the Local Union's files, in the presence, and with the participation, of Regional Coordinator Boyens. Neither Mr. Warner's written nomination, his written second nor his written acceptance were located. The Local Union does not maintain a log of the mail it receives, none of the Local Union officers recall having seen any nomination, second or acceptance with respect to Mr Warner's candidacy.

The Local member who nominated Mr Warner produced for the Election Officer a return receipt demonstrating receipt by the Local Union of the written nomination of Mr Warner. Mr Warner's seconder states that he did not personally mail his second to the Local Union, rather he gave it to Mr Warner who was to mail it. The seconder produced for the Election Officer a draft of said written second.

Mr Warner claims that he mailed both his acceptance and the written second of his nomination to the Union on or about January 10, 1991. While he states that the documents were mailed return receipt requested, he was unable to produce such receipts. The ballots for the 1991 IBT International Convention delegate and alternate election for Local 961 were printed and mailed without Mr Warner's name appearing as a candidate. Mr Warner received his ballot on February 26, 1991.¹

¹Mr Warner admits that on February 23, 1991, a fellow member who had received his ballot, informed him that his name was not on the ballot. On that date, however, Mr Warner was required to be in Farmington, New Mexico -- approximately four to

The basic issue in this case is whether the protest is timely. Article XI of the *Rules* provides that protests are to be filed within forty-eight hours of the time the protester has knowledge of the events that give rise to the protest. Thus, the issue to be determined is whether Mr. Warner knew or reasonably should be expected to have known that he was not being considered a candidate for delegate from Local Union 961 prior to the time the delegate and alternate delegate ballots were mailed and received.

Mr Warner attended the nominations meeting for Local Union 961. His name was not announced as a nominated candidate at that meeting. The nomination or the second of his nomination was not announced during that meeting.

During that meeting, Mr. Warner was notified, as were all other members present, that all nominated candidates should provide their names and addresses to the Local. All nominated candidates would then receive notice from the Regional Coordinator of the lottery for ballot placement. While Mr Warner gave his name and address to the Local Union officers so he could receive the notice of ballot placement in the lottery, no such notice was sent to or received by him.

The events of the nominations meeting which he attended and the failure to receive notice of the lottery drawing should have put Mr Warner on notice that he was not considered to be a candidate for delegate to the 1991 IBT International Convention. Yet Mr Warner did nothing until after the ballots had been printed and mailed to Local Union members. He never called the Local Union nor the Regional Coordinator nor the Washington Office of the Election Office. Thus his protest, coming weeks after the nominations meeting and weeks after the lottery drawing, must be considered untimely. On this basis the protest is DENIED.

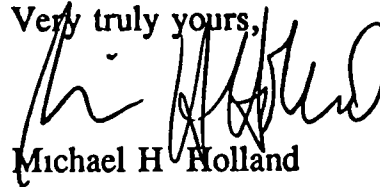
If any interested party is not satisfied with this determination, they may request a hearing before the Independent Administrator within twenty-four (24) hours of their receipt of this letter. The parties are reminded that, absent extraordinary circumstances, no party may rely upon evidence that was 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,

five hundred miles from his home in Colorado Springs, Colorado -- because of a serious family problem, his mother was undergoing cancer surgery. Mr. Warner did not return home until late in the evening on February 26, 1991. This protest was filed on February 27, 1991. Under the circumstances of this case, the Election Officer does not deem this time lapse, standing alone, to make the protest untimely.

Thomas A Warner
Page 4

D C 20001, Facsimile (202) 624-8792 A copy of the protest must accompany the
request for a hearing

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael H. Holland", written over the typed name below.

Michael H Holland

MHH/mca

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

RECEIVED
MAR 15 1991

IN RE:

THOMAS A. WARNER,

Complainant,

and

DERL FORBIS,
IBT LOCAL UNION NO. 961,

Respondents.

91 - Elec. App. - 99 (SA)

DECISION OF THE
INDEPENDENT
ADMINISTRATOR

961/RMT

X MHH
JS
BJA

This matter arises out of an appeal from a March 7, 1991, decision of the Election Officer in Case No. P-588-LU961-RMT. A hearing was held before me by way of telephone conference on March 13, 1991, at which the following persons were heard: Thomas Warner, the complainant; John J. Sullivan, on behalf of the Election Officer; and Bruce Boyens, the Regional Coordinator.

Mr. Warner, a member of Local 961, contends that his name was placed in nomination for the position of delegate to the 1991 IBT International Convention via a written nomination and second, which he accepted in writing. He claims that his name was erroneously omitted from the ballot.

A thorough search conducted by the Local and Mr. Boyens, the Regional Coordinator, failed to locate Mr. Warner's written nomination, his written second or his written acceptance. Despite

this, the Election Officer did not doubt that the written nomination, second and acceptance were sent to the Local Union as Mr. Warner maintains. The disappearance of the submissions, which remains inexplicable, cannot be attributed either to Mr. Warner or the Local. For purposes of this protest, the Election Officer accepted that Mr. Warner was duly nominated as he contends. I accept this conclusion for purposes of this appeal.

The nominations meeting for Local 961 was held on January 27, 1991. Despite the fact that Mr. Warner accepted his nomination by mail, he was present at the nominations meeting. Mr. Boyens, who was also present to supervise the nominations meeting, announced to all those in attendance the names of all members who had been nominated in person at the meeting or in writing beforehand. Mr. Boyens maintains that Mr. Warner's name was not announced. Mr. Boyens reviewed the notes that he used at the January 27 meeting and confirmed that Mr. Warner's name was not found in those notes.

During the Election Officer's investigation, Mr. Warner indicated that he could not recall whether his name was announced at the meeting. At the hearing, however, Mr. Warner stated that he did, in fact, hear his name. I reject this contention. Mr. Warner's statement at the hearing that he did hear his name is refuted by Mr. Boyens' testimony, Mr. Boyens' written notes, the subsequent actions of the Local and Mr. Warner's previous statement to the Election Officer.

At the conclusion of the January 27 nominations meeting, Mr. Boyens told all members present that the nominees should give their names and addresses to the Local and he advised them that he would send all nominees a notice regarding the lottery drawing to determine placement on the ballot. Mr. Warner did, in fact, give his name and address to the Local Union at that time. Although Mr. Warner claims that he supplied his name because Mr. Boyens announced him as a candidate, I find that Mr. Warner supplied his name because he simply believed (given the fact that he was nominated via mail) that he was entitled to supply his name.

The second clerical error complicating this matter came about when the Local Union supplied the names and addresses of the nominees to Mr. Boyens. Unfortunately, the Local Union omitted Mr. Warner's name in the belief that he was not a recognized candidate pursuant to the announcement of nominees at the nominations meeting. In other words, the Local confirms that Mr. Warner's name was not called at the meeting. Consequently, Mr. Warner did not receive any notice of the lottery drawing for placement on the ballot.

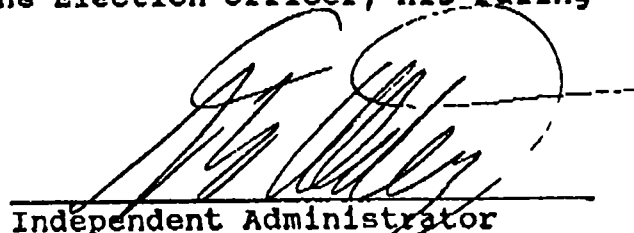
On February 23, 1991, a fellow Union member who had received his ballot by mail, informed Mr. Warner that his name was not on the ballot. After having first attended to a personal family medical emergency, Mr. Warner filed his protest on February 27, 1991.

Article XI, Section 1.a.(1) of the Rules For The IBT International Union Delegate And Officer Election (the "Election Rules") requires protests to be filed within forty-eight hours of the offending conduct "or such protests shall be waived." The Election Officer correctly stated in his Summary that "[t]he threshold issue here is when Mr. Warner knew or should have known that he was not being considered as a nominee for delegate so that his duty to protest such omission was triggered." The Election Officer concluded that Mr. Warner should have known that he was deemed not to be a candidate for delegate on January 27, when the names of nominees were announced, in his presence, at the nominations meeting.

Even if I were to accept, for purposes of argument, Mr. Warner's contention that he heard his name called on January 27, 1991, Mr. Warner should have also heard Mr. Boyens notify all nominees that they could expect to receive information about a lottery drawing for placement on the ballot. Mr. Warner never received such notice. Thus, following the meeting, as the time for the election drew closer, Mr. Warner must have been aware, or should have been aware, that he had not been contacted regarding the lottery to establish the ballot placement. In short, as the Election Officer stated, "[a]n exercise of minimal diligence would have led Mr. Warner to contact the Local Union, Mr. Boyens, or the Election Officer in Washington, D.C., to inquire about his status at some point before he received the ballot." Mr. Warner did not.

Based on these facts, the Election Officer concluded that "Mr. Warner's protest, filed a month after the nominations meeting, must be considered untimely." Thus, the Election Officer denied Mr. Warner's protest.

For the reasons expressed by the Election Officer, his ruling is affirmed in all respects.



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

Dated: March 15, 1991.