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Michael H Holland
Election Officer

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March 8, 1991

VIA UPS OVERNIGHT

Rudy Hernandez
32276 Valiant Way
Union City, CA 94587

Albert Costa
Secretary-Treasurer
IBT Local Union 853
8055 Collins Drive
Oakland, CA 94621

Rome Aloise
V P & Business Agent
c/o Local Union 853
8055 Collins Drive
Oakland, CA 94621

MacPherson Wholesale
Distributors
Attn William Green
1327 Park Ave
Emeryville, CA 94612

Re: Election Office Case No. P-624-LU853-CSF

Gentlemen

A pre-election protest was filed pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules") The protest was filed by Rudy Hernandez, a member of Local 853 and a candidate for delegate to the 1991 IBT International Convention from Local 853 In his protest, Mr Hernandez alleges that Mr Aloise, the Secretary-Treasurer of Local 853, and also a delegate candidate from Local 853, is denying the membership the right to a fair election by distributing absentee ballot request forms to members of Local 853 as part of his campaign effort

The investigation conducted by the Election Officer disclosed that the absentee ballot request forms are being distributed by Mr Aloise These forms state that due to work and personal schedules, the member is unable to vote in person, the forms do not require the member to delineate the actual and specific reason he is unable to vote in person Mr Aloise stated that the Local's past policy was to send absentee ballots to any requesting member as long as the requesting member offered any reason for being unable to vote in person, the Local never investigated the validity of the reason given Thus, in effect, any member who requested an absentee ballot was permitted to vote absentee The investigation revealed no evidence which contradicts Mr Aloise's assertions

Article XII, Section 2 of the *Rules* provides that any member who is eligible to vote and who desires to vote by absentee ballot shall be permitted to do so if

(1) such member is unable to vote in person on the election day during voting hours due to his or her work or vacation schedule, illness, injury or obligations to serve jury duty or fulfill military obligations, (2) such member lives and works more than thirty-five (35) miles from the polling site, or (3) for any other reason that Local Union has permitted absentee voting in either of its past two elections.
(emphasis added)

Mr Hernandez claims that Mr Aloise's distribution of the absentee ballot requests to Local 853 members violates the *Rules* because the election notice printed in the Northern California Teamster and the Plan Summary posted on Local Union bulletin boards contained no reference to the provisions of Article XII, § 2 (3) of the *Rules*. Mr Hernandez claims that Mr Aloise is exploiting the lack of notice to the members concerning their right to receive an absentee ballot upon request, to the benefit of his campaign

Mr Hernandez's protest does not state a violation under the *Rules*. The *Rules* provide that members are entitled to request and vote by absentee ballot for the reasons set forth in the subsections 1 and 2 of Article XII, § 2 of the *Rules* as well as for any reason the Local has permitted absentee voting in the past. The evidence establishes that the Local's past practice with respect to requests for absentee voting has been very liberal, essentially the Local has mailed absentee ballots to, and permitted absentee voting by, any member who requests an absentee ballot. The facts also demonstrate that as a candidate in the two previous Local Union officer elections, Mr Hernandez should have been aware of the Local's absentee ballot policy. The *Rules* clearly provide that absentee ballots will be permitted for the enumerated reasons set forth in Article XII and for any other reasons that the Local Union has permitted absentee voting in the past¹. Therefore, the actions of Mr Aloise do not violate the *Rules*. Further, there is nothing that precludes or now prevents Mr Hernandez from also distributing absentee ballot requests to Local 853 members.

Finally, at the time of the election count, the eligibility of all members to vote will be determined by the Regional Coordinator, Mr Don Twohey in accordance with Article VI of the *Rules for the IBT International Union Delegate and Officer Election* and the *IBT Constitution*. The eligibility of absentee ballot voters will also be determined in accordance with the good standing requirements of the *Rules* and the *IBT Constitution*. Moreover, all candidates and their observers have the right to challenge the eligibility of any voter at the time of count. Such challenges will be heard and ruled on by the Election Officer representative. However, challenges to the eligibility of

¹The election notice does not limit rights afforded to members under the *Rules*

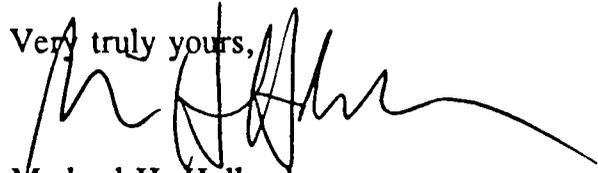
Rudy Hernandez
Page 3

voters on the basis of whether or not they were entitled to vote absentee will not be entertained by the Election Officer Regional Coordinator at the time of the ballot count pursuant to the Local's past practice and my decision in this case

In accordance with reasoning set forth above, Mr Hernandez's 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
Donald E Twohey, Regional Coordinator