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Michael H Holland
Election Officer

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March 21, 1991

VIA UPS OVERNIGHT

James Michael Scott
P O Box 271
Menlo Park, California 94026-0271

Benjamin Franklin Hotel
Attn Joyce Cirmelli
44 East Third Avenue
San Mateo, California 94401

Ben Leal
Secretary-Treasurer
IBT Local Union 856
185 Berry Street
San Francisco, California 94107-1729

Re: Election Office Case No. P-632-LU856-CSF

Gentlemen

A pre-election protest was filed pursuant to Article XI, Section 1 of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") The complainant, James Michael Scott, protests the denial of his claimed right to vote in the Local 856 election for delegates and alternate delegates to the 1991 IBT International Convention ¹

An investigation has disclosed the following facts Scott was hired on August 26, 1990 by the Benjamin Franklin Hotel, an employer under contract with Local 856 He was hired into a part-time two-days-or-nights-a week position, the principal job function being as a relief night auditor His employment was conditioned, however, upon his being cross-trained for relief coverage on the morning or afternoon shifts

¹The Local Union 856 nomination meeting for delegates and alternate delegates to the 1991 election were held on January 2, 1991 As the number of nominated and eligible candidates did not exceed the number of delegate and alternate positions to be elected, there is no necessity for an election and such nominees shall be declared duly elected *Rules*, Article II, Section 6 The protester made application for membership in Local 856 on January 9, 1991 Hence, this protest will be treated as a pre-election protest with respect to the forthcoming International Union officer election Moreover, even had the application for membership predated the delegate and alternate delegate election so as to create a post-election protest with respect to that election, the one vote was insufficient to effect the outcome of that election

The applicable collective bargaining agreement between the hotel and Local 856 provides for a thirty-one day probationary period for newly hired employees with an option for the employer to extend the period for an additional thirty days. The union security clause in the agreement requires union membership to commence thirty-one days after hire. Given that Scott was only to work two days a week and that his probation/training period would thus extend beyond thirty-one calendar days, ~~the Local 856 business agent agreed that the Union security requirements for Scott, i.e., the date by which he was required to join the Union, would be deferred until the completion of the cross-training~~

The hotel agreed to pay Scott's initiation fee but required Scott to personally pay his union dues.² Scott did not complete his training and his employment was terminated on February 13, 1991. No initiation fee or dues were ever paid to the Local Union by or on behalf of Scott.

Eligibility to vote in an IBT election is conditioned upon a member being in good standing with his dues and initiation fees paid up. See IBT Constitution, Article X, Section 5(c), Article XXII, Section 4(c). ~~Under the circumstances above described, Mr. Scott was never a member, let alone a member in good standing of Local 856, during his period of employment by the hotel. The issue of membership was deferred until the completion of his training, the precedent to his completion of his probation period. Scott had not previously been a member of the IBT, was not a member while employed by the hotel, and thus, could not maintain membership subsequent to his termination from employment. Therefore, Scott has never been eligible to vote and he is not presently eligible to vote. Accordingly, the protest is DENIED.~~

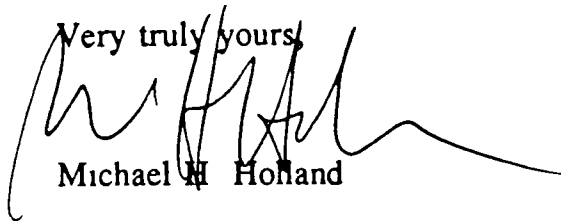
If any interested party is not satisfied with this determination, they may request a hearing before the Independent Administrator within twenty-four (24) hours of their receipt of this letter. The parties are reminded that, absent extraordinary circumstances, no party may rely upon evidence that was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

²The collective bargaining agreement contains a dues check-off provision. Presumably, it would have been applicable in the instant situation had Scott not been terminated.

James Michael Scott
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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 W. Holland", written over the typed name below.

Michael W. Holland

MHH/ads

cc Frederick B Lacey, Independent Administrator
Donald E Twohey, Regional Coordinator

IN RE

JAMES MICHAEL SCOTT,

and

IBT LOCAL UNION NO. 856,

91 - Elec. App. - 121 (SA)

DECISION OF THE
INDEPENDENT ADMINISTRATOR

This matter arises out of an appeal from a March 21, 1991, decision of the Election Officer in Case No. P-632-LU856-CSF. A hearing was held before me by way of telephone conference on April 3, 1991, at which the following persons were heard: John Sullivan on behalf of the Election Officer; the Complainant James Michael Scott, and Dick Linebarger on behalf of Mr. Scott.

The relevant facts are simple and are not in dispute. As stated in the Election Officer Summary:

1. On August 26, 1990, Mr. Scott was hired by the Benjamin Franklin Hotel in San Mateo, California on a part-time basis as a relief night auditor. He was hired with the understanding that he would also train as relief auditor for the morning and afternoon shifts.
2. The collective bargaining agreement between Mr. Scott's employer and Local 856 included a union security clause that requires employees to become members of the Local within 31 days of their date of hire
3. The hotel and the Local reached agreement that the date on which Mr. Scott would be required to become a member, which would normally accrue 31 days after August 26, would be deferred until Mr. Scott

completed his training for the relief auditor position.

4. On December 18, 1990, Mr. Scott was advised by Joyce Cirimelli, a Manager of the hotel, that all employees of the hotel were required to join the union. He did not take any action at that time to do so.
5. On January 2, 1991, the Local held its nominations meeting, at which the number of nominated candidates eligible to fill the position of delegate and alternate delegate to the 1991 IBT convention did not exceed the number to be elected. Accordingly, the nominees were declared duly elected pursuant to Article II, Section 6 of the Election Rules.
6. At that time, Mr. Scott was not a member of the Local, nor had he submitted an application to become a member. Accordingly, he did not participate in the nominations process.
7. Two days later, on January 4, 1991, Ms. Cirimelli of the Benjamin Franklin Hotel advised Mr. Scott by memo that he should complete forms for application for membership to the Local that she was enclosing for him and that the hotel would pay the cost of his initiation fee in consideration of the hardship of paying that fee out of a part-time salary. He would be responsible, however, for his monthly dues.
8. On January 9, Mr. Scott completed the application forms and returned them to Ms. Cirimelli. Ms. Cirimelli apparently forwarded the application forms to the Local. However, the Local did not receive either an initiation fee or a payment of dues from the hotel or from Mr. Scott.

There is some dispute as to whether or not Mr. Scott ever completed his training. Nonetheless it is clear that in late February Mr. Scott wrote to the Secretary-Treasurer of Local 856 to inquire into his membership status. In that letter Mr. Scott advised Mr. Leal that he had been terminated and was investigating

whether he should challenge his termination through the union or independently through an administrative or state law action.

On February 26, the Local responded that it had not received dues payments or an initiation fee on behalf of Mr. Scott.

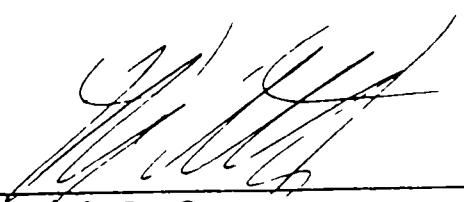
Thereafter, Mr. Scott filed a protest with the Election Officer, challenging his exclusion from voting in the Election Officer supervised elections. As noted, however, by the time Mr Scott filed his protest the contested election of delegates and alternate delegates had been completed. Moreover, by the time these elections were completed Mr. Scott had not even applied for membership in the Local. Nonetheless, the Election Officer treated Mr Scott's protest as a pre-election protest for the election of International Officers scheduled for December of 1991. Mr. Scott does not challenge the treatment of his protest on a pre-election basis.

The Election Officer's investigation revealed that Mr. Scott was not a member of the Local at all let alone a member in good standing. Not only were no initiation fees paid by or on behalf of Mr. Scott, but Mr. Scott did not pay any dues to the Local.

Accordingly, the Election Officer's denial of Mr. Scott's protest is affirmed.

It should be noted, however, that at the hearing before me Mr. Scott expressed an interest in establishing his union membership so that he can participate in all types of union activity not just the election for International Officer's in 1991. It must be made

clear that the authority of the Independent Administrator and the Election Officer is limited to the election process contemplated under the Consent Order entered into between the IBT and the Government on March 14, 1989



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

Dated: April 4, 1991