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March 12, 1991

VIA UPS OVERNIGHT

John A Aulecino, Jr
c/o The Democracy Slate
Rd #1, Box 280 A
Rayland, Ohio 43943

William F Genoese
Secretary-Treasurer
IBT Local Union 732
15 East 26th Street
Suite 1508
New York, New York 10010

Re: Election Office Case No. P639-LU732-NYC

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*") by John A Aulecino, Jr, a member of Local 732 and a candidate for delegate from that Local. Mr Aulecino contends that William Genoese, Secretary-Treasurer of Local 732, has violated the *Rules* by filing a protest concerning the eligibility of certain nominated delegate and alternate delegate candidates from Local Union 732. Mr Aulecino further contends that any problems with eligibility of the candidates was the fault of Mr Genoese in not mailing notices of dues arrearages to Local 732 members.

The protest process is an integral part of the *Rules*. Utilization of that process is essential for ensuring free, honest and open elections. The *Rules* encourage that the protest process be used to resolve issues and problems. Thus, the Election Officer does not normally investigate or inquire into the motivations of any IBT member when he/she files a protest.

The protest filed by Mr Genoese (currently pending determination by the Election Officer in Case No E-250-LU732-NYC) concerns the eligibility of certain candidates nominated at Local 732's nomination meeting. That protest challenges the eligibility of the nominated candidates and the eligibility of those members who nominated and seconded the nominations contending that they are not current in their dues to Local 732. That protest is still being investigated by the Election Officer. A determination will be issued on the merits of the protest, which decision will resolve the second part of Mr Aulecino's protest.

John A Aulecino, Jr
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Accordingly, the protest of Mr Aulecino 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/ads

cc Frederick B Lacey, Independent Administrator
Amy Gladstein, Regional Coordinator

IN RE:

JOHN A. AULICINO, et al.,

Complainants,

and

WILLIAM F. GENOESE, and
IBT LOCAL UNION NO. 732,

Respondents.

91 - Elec. App. - 105 (SA)

DECISION OF THE
INDEPENDENT ADMINISTRATOR

This matter arises out of two appeals from two pre-election protest decisions by the Election Officer. The first was issued in Election Officer Case No. E-250-LU732-NYC. The second was issued in Case No. [REDACTED] Given that the two appeals were rooted in the same underlying protest, the two were heard together at a hearing held before me on March 20, 1991. At that hearing, the following persons attended: Ronald Wilder, Esq., an attorney on behalf of Local 732; Christine Concannon, Esq., an attorney assisting Mr Wilder; Pat Droz, Local 732's Officer Manager; and Raymond Moralis, Local 732's Election Committee Chairman. In addition, the following persons were heard via telephone conference: Barbara Hillman, on behalf of the Election Officer, Gail Mrozowski, also on behalf of the Election Officer; Mark McGuigan, an adjunct Regional Coordinator; and Cecelia Tagliareri, Tony Negron, Jerry White, John Aulicino, and Janet Weeks, all

members of Local 732 and the subjects of the underlying eligibility determinations.

ELECTION OFFICER CASE NO. E-250-LU732-NYC

William F. Genoese, Secretary-Treasurer of Local 732, filed a timely pre-election protest concerning the eligibility of certain delegate candidates nominated at the Local 732 nominations meeting. The Election Officer denied the protest as to eight of the nine challenged candidates. Local 732 appealed the Election Officer's determinations.

Article VI, Section 1.a.(1) of the Rules For The IBT International Union Delegate And Officer Election (the "Election Rules") provides that to be eligible to run as a delegate or alternate delegate to the 1991 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 consecutive months prior to the month of nomination with no interruptions in active membership due to suspensions, expulsions, withdrawals, transfers or failure to pay fines or assessments.

Article X, Section 5(c) of the IBT Constitution provides as follows:

Membership dues to Local Unions are due on or before the first day of the month and must be paid on or before the last business day of that month. Any member failing to pay his dues at such time shall not be in good standing for such month but may restore good standing for such month for the purpose of attending meetings, nominating, voting and participating in affairs of the Local Union by payment of his delinquent dues prior to

said meeting. Payment of such dues after their due date shall not restore good standing status for such month or months in computing the continuous good standing status required . . . as a condition of eligibility for office. However, a member on dues checkoff whose employer fails to make a proper deduction during any month in which the member has earnings from which the dues could have been deducted shall not lose good standing status for that month. In such an event, the Local Union shall notify the member of his employer's failure and payment shall be made by the member within thirty days of said notice in order to retain good standing status.

Article II, Section 3(h) of the Election Rules provides that to be eligible for nomination as a delegate or alternate delegate, a member must be nominated and seconded by a member in good standing, both with their dues paid to the month prior to the nominations meeting.

JOHN AULICINO

The Election Officer ruled Mr. Aulicino eligible to run as a candidate for delegate to the 1991 IBT International Convention. Although Mr. Aulicino had a dues arrearage, the Election Officer found that the arrearage was caused by the failure of Mr. Aulicino's employer to make a proper dues "checkoff" deduction and to remit payment to the Local. In addition, the Election Officer found that the Local did not notify Mr. Aulicino of any arrearage. The Election Officer, therefore, concluded that in accordance with Article X, Section 5(c) of the IBT Constitution, Mr. Aulicino's good standing would not be affected by the failure of his employer to deduct and remit dues. Given this finding, it also follows that Mr. Aulicino is eligible to nominate or second the nomination of

any other candidate. According to the Election Officer's review of Mr. Aulicino's records, the arrearage was created in July 1987.¹

The Local disputes the fact that Mr. Aulicino's arrearage was created in July of 1987. The Local contends that due to an occupational injury, Mr. Aulicino was out of work and "off" the payroll from May 16, 1987, through to June 23, 1987. Thus, the Local argues, given the fact that Mr. Aulicino had no earnings for this five and one-half week period, Article X, Section 5(c) of the IBT Constitution is inapplicable because there were no earnings from which his dues could have been deducted. In making this argument, the Local does not find it significant that Mr. Aulicino had earnings for the first two weeks in May 1987 and the last week in June 1987 from which dues could have been deducted. The Local does find it significant, however, that the collective bargaining agreement between Mr. Aulicino's employer and Local 732 provides that dues are to be deducted on a weekly basis and remitted to the Local at the end of each month. If an employee has no dues in any given week, the employer does not take out a double deduction in the following week. What this means in a practical sense, is that

¹ Local 732 uses what has been termed a collapsible dues payment system, wherein dues received are applied to the last month which has not been paid regardless of the month in which the dues are received. Thus, a dues arrearage created in July 1987, unless cured, would carry forward to the present. In In Re: Bohn, 90 - Elec. App. - 10 (November 9, 1990), the Independent Administrator indicated that he was not "prepared to find the 'collapsible' system unreasonable, let alone unlawful."

Constitution contemplates that a member on dues checkoff will not be penalized for the failure of an employer to deduct his dues if he has total earnings in a month sufficient to pay those dues.

I find that the plain language of Article X, Section 5(c) supports the Election Officer's interpretation. That provision states that members on dues checkoff will not lose good standing status for any given month if an "employer fails to make a proper deduction during any month in which the member has earnings from which the dues could have been deducted." (Emphasis supplied). The provision clearly contemplates dues deduction on a monthly basis, not on a weekly basis.

Moreover, Article 18(B) of the Local 732 Bylaws is not as clear as the Local suggests. In addition to the provision quoted above, that section also provides that:

Members whose dues have been withheld by their employer pursuant to a voluntary checkoff agreement shall not be declared in bad standing merely because the employer fails to remit checkoff dues to this Local Union on or before the last day of the month. (Emphasis supplied.)

Local 732's own Bylaws contemplate the remittance of dues on a monthly basis. The Bylaws say nothing about weekly deductions.

Local 732's members have a right to rely on the IBT Constitution and their own Bylaws. Both contemplate that members on dues checkoff satisfy their dues obligation so long as they have sufficient earnings within a one-month period to pay their dues. Notwithstanding the conflicting provision of the collective bargaining agreement, I am not prepared to ignore the provisions of

the IBT Constitution, nor for that matter the provisions of Local 732's Bylaws. Thus, I agree with the Election Officer that Mr. Aulicino is eligible to run as a candidate for delegate to the 1991 IBT International Convention.²

This does not end our consideration of Mr. Aulicino's eligibility. Mr. Aulicino was nominated by Larry Gilbert. Larry Gilbert is not a member in good standing of Local 732 and, therefore, was not eligible to nominate Mr. Aulicino. The Election Officer found, however, that Mr. Aulicino was seconded by five members in good standing. Any of those five seconders would have been eligible to nominate Mr. Aulicino. Thus, the Election Officer concluded that Mr. Aulicino demonstrated that at least two members of Local 732 supported his candidacy. The Election Officer, in his Summary, stated that:

The purpose of Article II, Section 3(h) of the Rules is to assure that the member's candidacy for delegate or alternate delegate is supported by at least two members in good standing other than the candidate. A second to a nomination is, therefore, no different than a nomination designated as such. Both a nomination and a second demonstrate that a member, other than the

² This ruling is consistent with the Independent Administrator's decision in In Re: Pettitt, 91 - Elec. App. - 94 (SA) (March 13, 1991). In Pettitt, a Local Union contended that its Bylaws provided for quarterly dues payments. The Local alleged that four of its members were ineligible to run as candidates for the position of delegate or alternate delegate since they did not pay quarterly dues on a timely basis for the twenty-four month period preceding the nominations meeting. Article X, Section 5(d) of the IBT Constitution provides that Local Unions may provide in its Bylaws for the payment of quarterly dues. Finding that the Local's Bylaws were ambiguous on the question of quarterly dues payments, the Independent Administrator "refuse[d] to find respondents ineligible based upon their failure to pay dues on a quarterly basis."

find that a single deviation from the rules in this instance "warrant[s] a generous interpretation designed to enlarge the eligibility base."³

Accordingly, I affirm the Election Officer's ruling that Mr. Aulicino was properly nominated as a delegate candidate to the 1991 IBT International Convention.

G.C. WHITE

The Election Officer found Mr. White to be a member in good standing and eligible to run as a candidate for delegate. Although Mr. White also had a dues arrearage, he had earnings in the month in which the arrearage was created. Given the fact that Mr. White was on dues checkoff, his employer failed to properly deduct and remit his dues pursuant to Article X, Section 5(c) of the IBT Constitution. In addition, the Local did not notify Mr. White of any dues arrearage.

As for Mr. White, the Local relies upon its weekly deduction/monthly deduction distinction which has already been rejected in my discussion of Mr. Aulicino. Accordingly, I affirm the Election Officer's ruling regarding Mr. White's good standing.

Mr. White was nominated by Barbara Marchese and his nomination was seconded by Janet Weeks. Ms Weeks' status was not protested

³ The Local suggests that Mr. Aulicino had merely two seconders. Even if I were to accept the Local's contention here, it would not change my ruling given that Mr. Aulicino would still have two members in good standing supporting his nomination.

by Local 732. Notwithstanding this, the Election Officer found that Ms. Weeks was a member in good standing of the Local. Thus, Ms. Weeks was eligible to second the nomination of Mr. White.

As the discussion which follows reveals, Ms. Marchese is eligible to be a candidate for delegate and, therefore, is eligible to nominate or second the nomination of any candidate. Accordingly, Mr. White was properly nominated and seconded in accordance with the Election Rules.

BARBARA MARCHESE

The Election Officer determined that Ms. Marchese was eligible to run as a candidate for delegate to the IBT International Convention. The issue regarding Ms. Marchese dates back to a 1971 maternity leave taken by Ms. Marchese. The Local states that its review of its records reveal that during Ms. Marchese's 1971 leave, she did not request a withdrawal card. Ms. Marchese had no recollection of whether she requested a withdrawal card. Having been presented with nothing to the contrary, I accept the Local's position regarding the withdrawal card.

Ms. Marchese had no earnings during her 1971 leave. Rejecting a strict application of the collapsible accounting method, the Election Officer found that "the use of the collapsible accounting method to continue delinquency for this length of time is unreasonable and repugnant any notion of fairness or democracy " The Local argues that Ms. Marchese had an obligation to check on

the status of her dues sometime within the past 20 years. In fact, the Local indicates that it periodically sends notices to its members urging them to check on the status of their dues. Still further, the Local indicates that it urges its members to take a withdrawal card when taking a leave of absence. In fact, a reminder to take a withdrawal card is emblazoned on the membership identification card issued to every member of Local 732.

The Local does not dispute the fact that it never notified Ms. Marchese that she was in arrearages. It states, however, that it was under no obligation to notify Ms. Marchese of any arrearages given the fact that Article X, Section 5(c) of the IBT Constitution only obligates a Local to notify members when employers fail to make a checkoff dues deduction from earnings. Since Ms. Marchese had no earnings during her leave in 1971, the Local was under no obligation to notify her of her arrearages.

I agree with the Election Officer that reliance on arrearages which occurred some twenty years ago to render Ms. Marchese ineligible would, indeed, do violence to any reasonable notion of fundamental fairness.

In making this ruling, I am not unmindful of the Independent Administrator's decision in In Re: Pettitt, 91 - Elec. App. - 93 (SA) (March 12, 1991) wherein the respondent argued that reliance on the collapsible dues system to carry forward an arrearage from 1987, more than 24 months prior to respondent's nomination, would

be unfair. In rejecting this argument, the Independent Administrator stated:

Given the collapsible accounting method it matters not that [the respondent's] one-month arrearage was carried forward from a time more than twenty-four months ago. The fact remains that [the respondent] was in arrearages within the twenty-four month period preceding the nominations meeting.

While the Independent Administrator has ruled that a four-year arrearage may be carried forward, it is clear that carrying forward a twenty-year arrearage, in this case, would be inequitable. This conclusion is further buttressed by the fact that during the course of the Election Officer's investigation, it was determined that the TITAN records for over 50 percent of the members of Local 732 reflect dues arrearages. This, of course, would adversely affect the good-standing status of over 50 percent of the membership of Local 732. Such continued arrearages for such a large portion of the membership reflects the fact that Local 732 does not, as a practice, notify its members of dues arrearages. When faced with such a large segment of a Local's membership, it would be antithetical to the spirit and intent of Election Rules for the Local to hide behind the technical requirements of Article X, Section 5(c) of the IBT Constitution and argue that they have no obligation to notify members of arrearages. Clearly, there is a serious problem with arrearages in Local 732. The Local has not taken any steps to remedy that problem. Members, such as Ms. Marchese, who have been carrying arrearages for long periods of time, should not suffer the consequences of Local 732's inaction.

Thus, while there may be certain instances where it may not be inequitable to carry forward arrearages for some twenty years, in this case basic concepts of fair dealing would clearly be violated if this were done.

Ms. Marchese was nominated by Cecelia Tagliaferri and her nomination was seconded by Tony Negron. Mr. Negron's good standing status was not challenged. The Election Officer's independent investigation revealed that Mr. Negron was, in fact, in good standing. As discussed below, Ms. Tagliaferri is also in good standing and eligible to nominate Ms. Marchese. Thus, Ms. Marchese was properly nominated pursuant to the Election Rules.

CECELIA TAGLIAFERRI

The Election Officer found that Ms. Tagliaferri was eligible to run as a candidate for delegate to the 1991 IBT International Convention. With Ms. Tagliaferri, as with the others, although she did have a dues arrearage, that arrearage was created by the failure of her employer to deduct and remit dues during months in which she had sufficient earnings for the employer to do so. In addition, the Local did not advise Ms. Tagliaferri of her employer's failure or any arrearage in dues.

In challenging Ms. Tagliaferri's good standing, the Local again relies upon the distinction between the employer's obligation to deduct dues on a weekly basis as opposed to a monthly basis. For the reasons set forth above, this argument is rejected.

Ms. Tagliaferri was nominated by Tony Negron. As noted, Mr. Negron's good standing status was not challenged and the Election Officer determined that he was, in fact, in good standing. Ms. Tagliaferri's nomination was seconded by Pat Sacco. The Election Officer found Ms. Sacco to be a member in good standing of the Local. Ms. Sacco's situation is now a familiar one. Her TITAN record reflected a dues arrearage, but that arrearage was caused by the failure of Ms. Sacco's employer to deduct and remit dues during months in which Ms. Sacco had earnings from which her dues could have been deducted and remitted. The Local failed to notify her of the failure of her employer or of any dues arrearage. Thus, in accordance with Article X, Section 5(c) of the IBT Constitution, Ms. Sacco's dues arrearage does not adversely affect her good standing status with the Local. In turn, Ms. Sacco was eligible to second the nomination of Ms. Tagliaferri. Thus, Ms. Tagliaferri was nominated and seconded by members of good standing of the Local Union and, therefore, her nomination is in accordance with the Election Rules.⁴

⁴ The Local argues that during the months in question regarding Ms. Sacco, she was out of work due to a back injury. The Local acknowledged that, while out of work, Ms. Sacco received sick pay. It was the common practice of Ms. Sacco's employer to deduct dues from sick pay. The question the Local raises is whether Ms. Sacco has sufficient sick pay in each of the months in which she was disabled. The Election Officer submitted pay stubs for the three months in which Ms. Sacco's arrearage accumulated. These pay stubs reflect that Ms. Sacco did, indeed, have earnings sufficient in each of these months from which dues could have been deducted by her employer and remitted to the Union.

JANET WEEKS

Janet Weeks was nominated as a candidate for delegate. Ms Weeks' eligibility to be a candidate was not challenged and the Election Officer's investigation found her eligible. Ms. Weeks was nominated by Pat Sacco and her nomination was seconded by Cecelia Tagliaferri. As set forth above, both Ms. Sacco and Ms. Tagliaferri are members in good standing and are eligible to nominate and second the nomination of a candidate. Thus, Ms. Weeks was properly nominated and seconded, thus, she is eligible as a candidate.

TONY NEGRON

The Election Officer found that Mr. Negron was properly nominated as a candidate for delegate to the 1991 IBT International Convention. Mr. Negron's eligilibility to be a candidate was not challenged and the Election Officer's investigation found him eligible. Mr. Negron was nominated by Janet Weeks and his nomination was seconded by Cecelia Tagliaferri. As set forth above, both Ms. Weeks and Ms. Tagliaferri are members in good standing of the Local and are themselves eligible to be candidated for delegate or alternate delegate to the IBT Convention. Thus, they are eligible to nominate and second the nomination of another candidate. Therefore, Mr. Negron was properly nominated and the nomination was properly seconded in accordance with the Election Rules.

RON KUTZAVITCH

The Election Officer determined that Ron Kutzavitch was properly nominated as a delegate to the 1991 IBT International Convention in accordance with the Election Rules. Mr. Kutzavitch's eligibility to be a candidate was not challenged and the Election Officer's investigation found him eligible.

Mr. Kutzavitch was nominated by Mark Kujawski. Although Mr. Kujawski's record reflects a dues arrearage, that arrearage, as with the others, was caused by his employer's failure to deduct or remit dues during months in which he had sufficient earnings for the employer to do so. In addition, the Local never notified Mr. Kujawski of any dues arrearages. Once again, the Local's challenge to Mr. Kujawski rests upon the weekly/monthly dichotomy. Having found no merit to this argument, Mr. Kujawski was, indeed, eligible to nominate Mr. Kutzavitch.

Mr. Kutzavitch's nomination was seconded by both John Aulicino and Larry Gilbert. Although Mr. Gilbert was found ineligible, Mr. Aulicino was a member in good standing at the Local Union as set forth above. Therefore, Mr. Kutzavitch was properly nominated by a member of Local 732 eligible to do so and his nomination was seconded by another member eligible to do so (Aulicino). Accordingly, Mr. Kutzavitch is eligible to run as a delegate to the 1991 IBT International Convention.

ELECTION OFFICER CASE NO. P-639-LU732-NYC

Mr. Aulicino filed a protest related to Mr. Genoese's eligibility challenges. In his protest, Mr. Aulicino alleged that Secretary-Treasurer Genoese abused the protest and election process governed by the Election Rules. Mr. Aulicino contended that the eligibility challenges filed by Mr. Genoese were improper because Mr. Genoese himself caused the arrearages by failing to provide notice of them to the affected members. Mr. Aulicino suggested that Mr. Genoese acted intentionally so that many of the members of the Union would be ineligible to participate in any election process conducted by the Local. In rejecting this protest, the Election Officer noted that:

Although the Election Officer does not intend in any way to suggest a tolerance of abuse of the election process established under the Election Rules, he must equally, emphatically affirm the integral place of the protest procedure in the election scheme. Because all IBT members are entitled, and indeed, encouraged to utilize the protest procedure to resolve any and all eligibility questions, the motivation behind such challenges is not generally scrutinized. If Mr. Genoese -- or any other IBT member -- has doubts about the eligibility of any candidate, nominator or seconder, it is his right as a member to seek a determination from the Election Officer.

For the reasons expressed by the Election Officer, his denial of Mr. Aulicino's protest is affirmed. In addition, Mr. Aulicino's concerns regarding Mr. Genoese's failure to notify the members of their arrearages was taken into proper consideration by both the Election Officer when he rendered his eligibility determinations, and by the Independent Administrator in issuing this ruling.