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May 30, 1991

**VIA UPS OVERNIGHT**

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Leroy Ellis  
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Sherman Carmell  
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225 West Washington Street  
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Re: Election Office Case Nos Post-65-LU705-CHI and P-643-LU705-CHI

Gentlemen

Eight post-election protests were filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") Additional explanatory material was also filed relating to these post-election protests In addition, the Election Officer on March 15, 1991 deferred the protest in Election Office Case No P-643-LU705-CHI for post-election consideration

Both the post-election protests and the deferred pre-election protest were filed by members of Local Union 705 who were candidates for delegate or alternate delegate positions on the Membership Slate The protests allege an overlapping variety of purportedly improper conduct on behalf of members of the opposing slate (the Ligurotis Team Slate), Local Union 705, counsel for Local Union 705, the Election Officer, the Regional Coordinator and the Election Office staff as well as allegations of alleged improprieties occurring with respect to the election process itself In addition the protests raise allegations with respect to worksite and membership lists Each protest is summarized below

A Deferred Election Protest of Archie Cook and Leroy Ellis This protest concerns the worksite lists provided to the members of the Membership Slate by Local Union 705 in accordance with the Election Officer's decision in Election Case P-514-LU-705-CHI et al The protesters allege that the worksite list provided contained a large

percentage of addresses which were not worksite addresses. The protest further alleges that an additional large percentage of addresses on the worksite list were addresses of worksites of Local 705 members who are owner/operators. The protest questions whether owner/operators are eligible to participate in the delegate and alternate delegate election for Local Union 705.

**B Post-election Protest of James P Nielsen** Mr Nielsen protests that prior decisions of the Election Officer regarding two protests filed by him and/or members of his slate, as well as the remedies imposed by the Election Officer in those cases where a violation was found, were rendered too late.

Mr Nielsen further contends that the mailing process suffered from numerous improprieties:

1. Ballots were improperly voided where the ballot return envelope label affixed by the Election Officer had been removed. Mr Nielsen contends that voters removed their labels and thus purposely voided their ballots, through fear of reprisal.

2. Ballots received from members on check-off who had dues arrearages were not counted.

3. Ballots were counted from voters whose names did not appear on the original election day roster, but had been subsequently added to the roster.

4 Certain of the labels identifying the voter on the return ballot envelopes were different from such labels on other returned ballot envelopes Mr Nielson appears to suggest that such ballots were fraudulent

5 Members of the Ligurotis Slate, some of whom are incumbent Local Union officers, were allowed to use a membership list to check-off voters who had voted

**C Post-election Protest by Archie J Cook, Leroy Ellis and Robert Persak** The first alleged violation in this protest concerns members who have been employed by Transcon and PIE The protest alleges that these companies went out of business in April, 1990 and December, 1990, respectively, and objects that Local 705 members formerly employed by these employers were permitted to vote

The second allegation of this protest contends that certain Local Union 705 members, who paid their dues by check-off, were declared by the Regional Coordinator to be in arrearage in their payment of dues and thus their ballots not counted The protest contends that this violates the IBT Constitution in that these Local Union 705 members were denied the opportunity to vote due to dues arrearages where the arrearage was in fact the fault of their employer

The next portion of this post-election protest alleges that ballots cast by Local Union 705 members were never received in the Post Office box and thus were not counted This portion of the protest also alleges that ballots were received in the Post

The last portion of the protest alleges that Mr Ligurotis violated the *Rules* by the transmittal of a letter, on Local Union stationary, signed by Mr Ligurotis as Secretary-Treasurer of the Local Union, which letter stated that the Ligurotis Team was the winning slate of delegate and alternate delegate candidates in the Local Union 705 delegate and alternate delegate election. The protestors contend that the letter was mailed prior to the time that the election tally was posted on Local Union bulletin boards as required by the *Rules*.

D Post-election Protest of John B McCormick, Robert Persak, Archie J Cook, Ralph Evenhouse, Leroy Ellis, Michael A Jordan and John P Nielsen This post-election alleges that the *Rules* were violated by legal representation provided by Sherman Carmell and other members or associates in the law firm of Carmell, Charone, Windmer, Mathews and Moss since the law firm was paid to represent the interests of Local Union 705 but, according to the protestors, represented the interests of the Ligurotis Team Slate during the entirety of the election process, including election protests and appeals. The protestors contend that Mr Carmell and the members and associates in his firm because they represent the Local Union are prohibited from representing the interests of candidates or a slate of candidates for delegate and alternate delegate. Thus the protestors apparently argue that even if paid by the candidates themselves, Mr Carmell and the members and associates of his firm are prohibited from representing such candidates. To the extent that Mr Carmell donated his services to

Office box from persons not on the election day eligibility roster While the protest admits that such ballots were not counted, the protestors suggest that the receipt of ballots from members not on the election day eligibility roster coupled with the non-receipt of ballots from members whose names were on the election day eligibility roster demonstrates that the election was improperly conducted

The next portion of this post-election protest alleges that Daniel Ligurotis and his slate had a copy of the membership list which the Membership Slate was denied the opportunity to view This portion of the protest further alleges that Mr Ligurotis received a copy of the Election Officer's election day eligibility roster indicating which members had voted in the election

The next portion of this post-election protest contends that the *Rules* were violated by the representation by the Ligurotis Slate by Sherman Carmell, the attorney for Local Union 705 The protest contends that Mr Carmell acted improperly by representing slate members since he is the attorney for the local union

The next portion of this protest contends that the worksite list provided to the Membership Slate by Local Union 705 in accordance with the Election Officer's decision in Election Office Case No P-514-LU705-CHI et al was obsolete The protestors also contend the obsolete list was deliberately provided to sabotage their campaign

such candidates, the protestors contend that this is prohibited by the *Rules* since Mr Carmell is an employer

E Post-election Protest of Michael A. Jordan and Leroy Ellis Mr Jordan protests the conduct of Adjunct Coordinator Freda Merritt. He contends that her conduct and the statements she made during the election count were improper and demonstrated lack of integrity

F Protest by Ralph Evenhouse and Leroy Ellis Messrs Evenhouse and Ellis generally state that there was a pattern of intimidation by business agents and stewards favoring the Local Union officers who were candidates on the Ligurotis Slate. They also specifically assert that certain improper conduct took place on the day of the election at the time of the ballot count. They indicate that Transcon and PIE members' votes were improperly handled and that a number of individuals whom they believe to be eligible were found to be ineligible. They point to a purported problem regarding the eligibility of members employed by UPS to vote. They also claim that a number of members of the Local did not receive ballots. Finally, they suggest that many identification labels were removed from the return ballot envelopes because the voting member desired not to be identified, demonstrating intimidation and the need for a new election. They contend that the protests concerning the conduct of the February, 1991 nominations meeting, Election Officer Case No. P-472-LU705-CHI and Election Officer Case No. P-475-LU705-CHI, should be reinvestigated and new decisions issued in the light of the



remarks alleged to have been made by Freda Merritt, a Regional Coordinator staff member on the day of the vote count

**G**     Additional Post-election Protest of Ralph Evenhouse and Leroy Ellis     Messrs Evenhouse and Ellis also protest the letter distributed on March 27, 1991 on Local Union 705 stationary signed by Daniel C Liguoris as Secretary-Treasurer of Local Union 705, which letter states that the Liguoris Team was the successful slate of delegate and alternate delegate candidates in the Local Union 705 delegate and alternate delegate election

**H**     Post-election Protest of James Nielsen, John Urquhart, Leroy Ellis, William P. Kelly and Ralph Evenhouse     The first portion of this protest contends that the Election Officer's determination with respect to the request for pre-nomination verification of eligibility made by members of the Membership Slate was tardy     This portion of the protest also contends that the Election Officer discriminatorily reviewed eligibility of the members of the Membership Slate more severely than he reviewed the eligibility of the members of the Liguoris Team

The next portion of the protest contends that the Regional Coordinator was biased because her spouse, who had previously been a member of the legislature of the State of Illinois and who is now a judge on the Appellate Court of the State of Illinois, had

received campaign contributions from three IBT Local Unions, albeit not Local Union 705

The next portion of the protest contends that members of the Membership Slate were not shown all the collective bargaining agreements in effect between Local Union 705 and employers of Local Union 705 members. The protest also contends that Local Union 705 deliberately delayed providing a worksite list, and that the worksite list, once provided, contained 300 bad addresses which the protestors contend represented employers employing more than 3,000 members of Local Union 705. These protestors also contend that the Membership Slate was denied the opportunity to review Local Union 705's membership list.

The protestors also contend that the events of the Local 705 nominations meeting of February 7, 1991 had a chilling effect on the membership of the Local. The protestors contend that all problems associated with the nominations meeting resulted from Ms. Hamos' association with her spouse. The protestors thus contend that the nominations meeting should have been conducted by the Election Officer.

In this protest it is also contended that Mr. Sherman Carmell is an employer and therefore was prohibited from participating in any appeal hearing before the Independent Administrator or requesting any extension of time with respect to hearing dates.

The protestors also allege that the Election Officer decided their protests too late, citing Election Office Case Nos P-475-LU705-CHI, P-472-LU705-CHI, P-600-LU705-CHI and P-609-LU705-CHI They contend that the Election Officer's decisions were late because the Election Officer didn't want to "ruffle Mr Ligurotis' feathers "

This protest also contends that infractions occurred during the election count on March 23, 1991 They contend that improprieties were committed because Election Officer staff had coffee and snacks provided by Local Union 705 They contend that the members of the Membership Slate were told by the Local Union that they could not be in the coffee room with members of the Election Officer's staff

They also assert that members who had worked for Transcon and PIE were improperly permitted to vote They contend that Transcon and PIE at the time of their bankruptcies failed to remit union dues money previously deducted from members wages, wages earned while the members were working for Transcon and PIE, and that therefore it was improper to allow such members to vote

They also contend that the Election Officer staff challenged many ballots because the voters names were not on the election day eligibility roster They claim that since these members had been mailed ballots, the returned ballots should not have been challenged by the Election Officer's staff This protest further contends that members who paid their dues through check-off were improperly challenged by Election Officer

staff as being in arrears in their dues payments. They contend that the Election Officer's staff thus improperly disenfranchised 600 eligible voters.

The protestors contend that the owners and/or employees of over three to four hundred gas stations were permitted to vote. They do not contend that such owners or such employees were not members of Local Union 705, but rather that the collective bargaining agreements between Local Union 705 and such gas stations were "sweetheart contracts." They thus allege that permitting these members to vote was improper.

This challenge, like post-election protest of Mr. Jordan described above, seeks a rerun election on the basis of the conduct of Freda Merritt during the election count.

The protestors contend that ballots from the delegate and alternate delegate election for Local Union 786 were mixed up with the ballots for the delegate and alternate delegate election for Local Union 705 and visa versa. They contend that ballots received from Local 705 members which had been mixed in with the Local 786 ballots were not counted.

The protestors also contend that no ballots were received from three to four thousand Local Union 705 members who said they voted.

I Post-election Protest of Gerald Zero, Michael A Jordan, James Nielsen and Leroy Ellis The protestors contend that Regional Coordinator Julie Hamos should not have had authority with regard to the election at Local 705 or any other Local Union. Specifically they suggest that her husband, Judge Alan Greiman, received contributions from Teamster locals in his election campaigns. More generally, the protestors allege that Ms Hamos' political ties have influenced her judgement with regard to the conduct of the election and her duties as Regional Coordinator. They contend that Ms Hamos' political ties and her marriage were the reasons for her determining that Local 705 members formerly employed by Transcon and PIE were eligible to vote and for her determining that Local 705 members employed at UPS who had dues arrearages were not eligible to vote, they contend that both sets of determinations were improper.

Additionally, these protestors reiterate the allegations regarding the improper use of union funds to pay the Carmell law firm. They contend that Mr Carmell and the other members and associates of his firm are, by reason of being employers, prohibited from participating in any thing relating to the election process.

Finally, the protestors request that the Election Officer disqualify himself from issuing rulings or decisions pertaining to the issues raised in their protests.

## DISCUSSION

Local 705 conducted its delegate election exclusively by mail ballot. Eighteen delegates and six alternate delegates to the 1991 IBT International Union Convention were to be elected from Local 705. There were 37 candidates running for the eighteen delegate positions, all but one of whom were affiliated with one of two slates, i.e. either the Membership Slate or the Ligurotis Team Slate. There were twelve alternate delegate candidates all of whom were affiliated with one of these two slates.

Ballots were mailed, as set forth in the Local Union Election Plan Summary, on or about March 6, 1991. The ballots were counted on March 23, 1991. The tally of the ballots counted was as follows:

### Delegate Election

#### Ligurotis Team Slate

Daniel C Ligurotis	3,136
Frank Snow	3,124
Gerald Welsh	3,080
Timothy H Cash	3,075
Louis E Esposito	3,070
Elvernice Parker	3,063
Gil Valerio	3,058
Ben Leonardo	3,056
Jim Spagnola	3,052
Mike Nicoletti	3,049
Edward Rebout	3,048
Donald P Heim	3,042
John Palumbo	3,042
Louis Durano	3,040
Sam Tenuta	3,033
Sam Canino	3,020
Robert Oviedo	3,018
Daniel C Ligurotis, Jr	2,988

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#### Membership Slate

John B McCormick	1,992
William D Kelly	1,966
Bernard Gosling	1,966
Robert J Persak	1,963
Harry E Stewart	1,958
Leroy Ellis	1,954
A Mike Hendrickson	1,948
Robert Lozanski	1,946
Archie Cook	1,940
Ben Pl Alessia	1,936
Ralph I Thornton	1,936
Michael A Jordan	1,931
Ralph Evenhouse	1,926
James P Nielsen	1,926
Richard Stepuszck	1,924
Richard J Pluskota	1,922
Gerald Zero	1,902
John L Urquhart	1,898

#### Independent

James Pietrucha	228
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### Alternate Delegate Election

#### Ligurotis Slate

Walter Mattis, Jr	3,071
Ken Hilb	3,063
Robert Holmes	3,058
Edward Benesch	3,031
Frank Szczerba	3,028
Angelo Geraci	3,006

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#### Membership Slate

Andrew Vallone	1,989
Ronald C. Oleson	1,968
John Martinez	1,958
David Tadla	1,947
Douglas Page Chapman, Sr	1,939
James Margaritas	1,923

Thus, the margin between the Ligurotis Slate candidate who received the least votes, Daniel C. Ligurotis, Jr. (the eighteenth ranked delegate candidate) and the Membership Slate delegate candidate who received the most votes, John B. McCormick (the nineteenth ranked delegate candidate), was 996 votes. The margin between the lowest winning vote getter and the highest losing vote getter in the alternate delegate race was 1,017 votes.

Article XI, § 1 (b)(2) of the *Rules* provides that "Post-election protests shall only be considered and remedied if the alleged violation may have affected the outcome of the election." Thus, a violation of the *Rules* alone is not grounds for setting aside an election unless there is a reasonable probability that the outcome of the election may have been affected by the violation. See Wirtz v. Local Unions 410, 410(A), 410(B) & 410(C), International Union of Operating Engineers, 366 F.2d 438 (2nd Cir.



1966) To determine whether an affect exists, the Election Officer determines mathematically whether the affect was sufficient in scope to affect the outcome of the election and/or whether there was a causal connection between the violation and the result or outcome of the election Dole v Mailhandlers, Local 317, 123 LRRM 2299 (D.C.M.D. Alabama 1989)

The protests were investigated and this decision issues in accordance with the foregoing legal principles The investigation was conducted by Adjunct Regional Coordinators Deborah Schaaf, Dennis Sarsany, Jonathan Rothstein, Jo Pressler and Robert Walsh, and, where appropriate, the Washington, D C staff of the Election Officer

A review of the allegations contained in the multiple protests described above as filed by different members of the Membership Slate shows an overlap with regard to the allegations and issues raised For a coherent discussion of these protests, the issues raised will be addressed categorized as follows

- I Allegations of Impropriety and Bias on the Part of the Election Officer, the Regional Coordinator and the Election Office Staff
- II Allegations Concerning Election Process and Ballot Counting
  - A Members did not receive ballots
  - B Cast Ballots Not Collected

- C Different Ballot Labels
  - D Void Ballots - No Label
  - E Challenged Ballots
  - F The Counting of Ballots Cast by Allegedly Ineligible Voters
    - 1 Members employed by PIE/Transcon
    - 2 Gas Station Owners/Operators
- III Allegations of Campaign Misconduct by the Liguoris Slate and the Local
- A Worksite List
  - B Membership List
  - C Lawsuit Filed by Local 705 and Members of the Liguoris Slate
  - D Misuse of Union Funds
  - E Allegations Regarding the Post-Election Letter of Daniel C Liguoris, Sr

I Allegations of Impropriety and Bias on the Part of the Election Officer, the Regional Coordinator and the Election Office Staff

The protestors raise numerous allegations contending that the Election Officer, the Regional Coordinator and the entirety of the staff of the Election Office are biased

against them and but for such bias the Membership Slate would have won the delegate and alternate delegate election in Local 705. The underpinnings for the conspiracy theory built by the protestors here is that Julie Hamos, the Regional Coordinator, by reason of her prior work history and the identity of her spouse had a conflict of interest which created a situation whereby Ms. Hamos was unable to perform her job dispassionately and competently. The protestor claim, in effect that Ms. Hamos became an agent of Local Union 705 and/or the Liguoris Slate. That the Election Officer employed Ms. Hamos is therefore alleged to have demonstrated his inextricable involvement in this conspiracy to aid the Liguoris Slate, a conspiracy and bias which according to the protestors affected all members of the Election Officer staff in all facets of the election.

These protests do not constitute the first time these allegations have been raised by members of the Membership Slate or their supporters. The allegations have been previously raised with the Independent Administrator as well as the United States Attorney for the Southern District of New York and were uniformly rejected by both. There is no factual basis for any of the contentions made in these protests.

Ms. Hamos' employment history is exemplary, demonstrating a commitment to working people and their unions, minorities, women, and others who face discrimination and lack of access and participation within the community. During the mid-seventies, she established the Legislative Support Center in Springfield, Illinois for legislative

advocacy on behalf of low income persons and minorities in the areas of housing, consumer, migrant, education, energy and women's issues. She thereafter became the Director of Legislative and Political Action for the American Federation of State, County and Municipal Employees ("AFSCME"), Council 31, Illinois. In such capacity she appeared before the Illinois General Assembly and local government legislative bodies throughout Illinois. During this period she also participated in the creation of the Progressive Chicago Area Network ("PRO-CAN") as a vehicle to provide, technical, strategic advice and support to minority and labor candidates for public office in the Chicago area. PRO-CAN later played a major role in the campaigns of Harold Washington for Mayor of the City of Chicago, including Mayor Washington's successful campaign in 1983 against Richard M. Daley.

From February, 1981 until February, 1989, Ms. Hamos served as Legislative Counsel and Policy Advisory on Women for Richard M. Daley, Cook County State's Attorney (1981-1985) and as Director of the Child Support Enforcement Division of the State's Attorney's Office from 1985 until 1988. In those capacities, Mr. Hamos continued her work with the General Assembly on criminal justice system issues, and developed and implemented policies and training programs to humanize the criminal justice system for women and children victims of crime. Later, at the State Attorney's Office, she administered the Division of that office responsible for over 300,000 child support and parentage cases in Cook County, managing a staff of 150 people with an annual budget of \$6 million.

With respect to the allegations of impropriety stemming from Ms. Hamos' 1988 marriage to Alan J. Greiman, Mr. Greiman was a State Representative in the Illinois Legislature from 1974 through 1987. On July 10, 1987, Mr. Greiman was appointed as Judge for the Circuit Court of Cook County, and recently Judge Greiman has been appointed to fill a vacancy on the Illinois Appellate Court, the intermediate appeals court in Illinois.

Judge Greiman organized a political action committee, BIGALPAC, on August 1, 1988. That committee serves primarily as a repository for remaining campaign funds and to fund future judicial election efforts, including his campaign for Appellate Court Justice in spring, 1992. Ms. Hamos became the Treasurer of BIGALPAC on August 1, 1988, her first position for any political action committee formed by Judge Greiman. BIGALPAC has not raised any funds since the time Ms. Hamos first took a position on it. Legally-made campaign contributions, made before Ms. Hamos was an officer of the campaign committee, and, indeed, prior to Ms. Hamos' and Judge Greiman's marriage, demonstrate no conflict with Ms. Hamos' duty as Regional Coordinator to perform her job dispassionately and competently.

There is nothing in Ms. Hamos' employment or personal history to suggest any bias in favor of or against Local 705, the officers of Local 705, the Ligurotis Slate or the Membership Slate. Other than vague allegations, and a conspiracy theory, there is

no evidence of any acts taken by Ms Hamos, or any failure on her part to act, other than in a totally professional and neutral manner

Neither is there any basis in fact to support the allegation that the Election Officer is also somehow biased against the members of the Membership Slate or their supporters. There were thirty pre-election protests filed related exclusively to Local Union 705, in addition there were three protests filed involving both Local Unions 705 and 710. The Election Officer has expended enormous resources to resolve these protests, including utilizing the resources of the United States Attorney for the Southern District of New York and the Federal Bureau of Investigation. While not all protests were resolved as speedily as the Election Officer might have desired, all were resolved and, where appropriate, remedies ordered. All pre-election violations which might have affected the outcome of the election were remedied prior to the date the ballots were mailed. The campaign mailing provided to the entire membership by Local 705 on behalf of the Membership Slate was accomplished simultaneously with the mailing of the ballots. To ensure the integrity of the election process, the Election Officer took the extraordinary step of mailing to each and every member of Local 705 a personal letter encouraging all members to participate in the process and assuring them of his vigilance with respect to their rights to so participate.

The members of the Membership Slate, their proposed nominators and seconders, all made requests to the Election Officer for verification of eligibility to run, nominate

or second in the delegate and alternate delegate election process for Local 705. The requests for verification were first made by letter dated January 21, 1991, approximately two weeks prior to the nominations meeting scheduled for Local 705. Further requests came in thereafter, including requests for verification which were not received by the Election Officer until a day or two prior to the date of the scheduled nominations meeting.

In most cases a two week, or ten working-day, period is sufficient for the Election Officer to verify eligibility. Local 705 is however not a TITAN local, as all members and supporters of the Membership Slate were aware. Further, members of the membership Slate continually cautioned the Election Officer and his staff that he could not rely on the membership records maintained by Local 705. They urged that the Election Officer in all cases go beyond the membership records to verify eligibility. The Election Officer did so. All employers were contacted and work histories verified.

In addition members of the Membership Slate who were not on checkoff and who would thus under normal circumstances be ruled ineligible to seek a delegate or alternate delegate position if their dues had not been timely tendered, contended that they should have been on checkoff. This required the Election Officer contacting not only the member but also the members' steward and business agent to ascertain the validity of the allegations. The Election Officer was also required to obtain from the Local, the

member and the member's employer all extant copies of check-off authorizations signed by the members

The members of the Membership Slate, and their supporters, who sought verification of eligibility to run, nominate or second, were cognizant of these potential problems yet waited until shortly before the scheduled nominations meeting to first request an eligibility verification. The Election Officer mobilized his staff to deal with the verification requests and, given the inherent problems in performing such verification, resolved the matters in a relatively speedy manner.

In accordance with the remand issued by the Independent Administrator in Election Office Case No. P-515-LU705-CHI, depositions were scheduled and taken by Gilbert A. Cornfield, a partner in the law firm of Cornfield and Feldman. Leroy Ellis was deposed in the offices of Cornfield and Feldman. He was represented by Archie Cook, an IBT member and a candidate with Mr. Ellis on the Membership Slate. No representatives of the Local or any other party were permitted to be present during such deposition. Similarly in accordance with the requirements of the Consent Order of March 14, 1989, neither Mr. Ellis or Mr. Cook were permitted at the other depositions conducted pursuant to the provisions of such remand.

That Mr. Cornfield conducted certain of the depositions at the office of the representative of a deponent, as opposed to his office, provides no basis for assuming



prejudice or bias. Lawyers routinely conduct depositions and hearings at a variety of locations, including the location of one of the parties.<sup>1</sup> Mr. Cornfield's reference to Sherman Carmell, the attorney for Local 705, as "Sherm" denotes acquaintanceship, hardly unusual between two attorneys engaged in the practice of the same type of law in the same city over a thirty year period, not bias.

Similarly there is no evidence of any prejudice or bias on the part of any of the Adjunct Regional Coordinators. The protestors complain that Adjunct Regional Coordinator Freda Merritt challenged the ballots of members whose names did not appear on the election day eligibility roster. She had an obligation to do so under the *Rules*. Further, those ballots were not voided, if the number of challenged ballots could have affected the results of the election, the challenges would have been resolved at that time.<sup>2</sup>

The protestors also allege that Ms. Merritt, during the period of the count, made certain remarks indicating that she believed that members of the Membership Slate were the aggressors in the fight that occurred at the February 7, 1991 nominations meeting for Local 705. See Election Officer Case Nos. P-472-LU705-CHI and P-475-LU705-CHI. They contend that since she told the agents of the FBI investigating such protests that she did not know who started the disturbance at the nominations meeting, Ms.

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<sup>1</sup>The propriety of the representation of by Mr. Carmell of the deponent Frank Snow is dealt with elsewhere in this decision.

<sup>2</sup>See further discussion *infra* regarding the issue of challenged ballots.

Merritt is a perjurer and biased against the Membership Slate. Initially it should be noted that comments made during the election count could have had no effect on the election. Secondly if Ms. Merritt were a perjurer, which she is not, the perjury alleged by the protestors shows bias in favor of the Membership Slate.

Somewhat similarly, the protestors complain that another Adjunct Regional Coordinator, Jonathan Rothstein, apologized to them for the fact that a disturbance occurred at the Local 705 nominations meeting while telling the FBI agents that he had no knowledge as to the identity of the member who started such disturbance. The protestors claim that Mr. Rothstein is thus also a perjurer and biased against them. Mr. Rothstein is not a perjurer. Remarks of apology are not inconsistent with lack of knowledge of the identity of the member who was the initiator of the disturbance at the nominations meeting.

Finally the protestors complain that members of the Election Officer staff conducting and supervising the election count ate "snacks" provided by the Local Union during the period of the count. Consumption of coffee and similar beverages is insufficient to demonstrate that bias exists. Further such activity occurring on the day of the ballot count could not possibly have affected the outcome of this election.

The Election Officer sees no basis for rerunning the delegate and alternate delegate election for Local 705 based upon the unsupported and illusory allegations and theories of the protestors regarding the biases of himself or his staff

## II Allegations Concerning Election Process and Ballot Counting

The delegate election for Local 705 was held exclusively by mail ballot. All members of the Local were advised of the approximate date ballots would be mailed and the procedure to follow in the event a ballot was not received. This information was provided in the Local Union Election Plan Summary as well as in the Notice of Election. See also *Rules*, Article XII §3 (c) (3)

It is the policy of the Election Officer in conducting mail ballot elections to use a mailing roster which includes members who may not be eligible to vote at the time of the mailing but may become eligible as of the later date of the election or ballot count. Thus, the mailing roster includes members who are delinquent in dues or who have not fully paid initiation fees. Local 705, a non-TITAN Local, was requested to prepare and did prepare and provide a mailing list of all active members. Such list was prepared under the direct supervision and control of the Election Officer. Another list of active members was prepared, also under the supervision and control of the Election Officer, just prior to the election. It is the duty and responsibility of the Election Office staff member supervising and coordinating the election count to challenge the ballot of any

member who appears to be ineligible, due to dues arrearages, failure to pay initiation fee, receipt of a withdrawal card, or otherwise, based upon the election day eligibility roster. In the event the challenged ballots might affect the outcome of the election, the challenges are resolved.

A total of 15,486 ballots were mailed by and under the direction of the Regional Coordinator for the Local 705 election. Twenty-seven of those ballots were mailed at the request of members who contacted the Regional Coordinator and indicated that a ballot had not been received. As of noon on the date of the election 5,936 ballots had been cast. Of those votes 5,175 were counted, 130 were declared void and 631 were challenged. Challenges were not resolved since challenged ballots did not effect the outcome of the election. *Rules, Article XII §5 (d)*

The protests filed complain of numerous irregularities in the above process. Each alleged irregularity is discussed below.

A. Members did not receive ballots

One of the protests alleged that many members did not receive a ballot. As noted above, all members of Local 705 were advised of the procedure to request a ballot in the event one was not received. Twenty-seven members utilized this procedure. Forty other members requested and were mailed duplicate ballots.

The protests specifically state that Gerald Loftus, a member of Local 705, did not receive a ballot. A review of the mailing roster indicates that Mr. Loftus' name was included on the roster with an address in Morton Grove, Illinois. His ballot was not returned to the Regional Coordinator by the Post Office as being undeliverable. The Election Officer knows of no reason why Mr. Loftus did not receive his ballot. However, the Election Officer notes that Mr. Loftus did request a duplicate ballot. A duplicate ballot was mailed to him, and a review of the election day roster indicates that Mr. Loftus voted.

The investigation did not reveal that members did not receive ballots. The number of ballots returned by the Post Office as being undeliverable was small. The Post Office box was checked daily for ballots returned as being undeliverable. Only 178 ballots or less than 1% of all packets mailed were returned as undeliverable. In all such cases, the Regional Coordinator attempted to correct addresses. In 75 cases, better addresses were obtained and ballots remailed. The Election Officer determines that there is no evidence to suggest that a significant number of members did not receive a ballot or that the mailing roster was not substantially accurate or complete.

## B Cast Ballots Not Collected

Several of the protests allege that numerous ballots cast were not retrieved from the Post Office. The protestors contend that during a phone bank conducted by the Membership Slate approximately 5,000 members were called and three to four thousand members stated that they had or would vote. Thus, the protestors conclude that more than 5,936 ballots should have been in the Post Office box on the day of the count. Further the protestors indicate that ballots cast from members in Local 705 had been mingled by the Post Office with ballots cast by Local 786 members. The protestors content that the ballots cast by Local 705 members were not retrieved from the Post Office and therefore not counted.

With regard to the commingling of Local 786 and Local 705 ballots, Regional Coordinator has advised the Election Officer that no Local 705 ballots were placed in the Post Office box for Local 786. The problem of ballot commingling was discovered on March 19, 1991, the date of the Local 786 delegate election. At that time some ballots for the Local 786 election were discovered in the Post Office box secured for Local 705 ballots. The ballots cast in the Local 786 election were removed and the Local 705 ballots maintained in the Local 705 Post Office box until the date of the Local 705 election count, four days later. Post Office supervisory personnel, in lieu of

bargaining unit employees, thereafter assumed the responsibility of sorting the returned cast ballots from that date forward

There is no evidence that any ballots received by the Post Office from Local 705 members were not placed in the appropriate Post Office box or that Local 705 ballots were placed in incorrect Post Office boxes. Review of all ballots retrieved from Post Office boxes utilized for any election in the Chicago region, including ballots collected after the election dates, failed to locate any ballot from a Local 705 member other than in the Post Office box reserved for Local 705 ballots.

There were 250 ballots collected from the Post Office after the date of the election. Of those 68 were postmarked one day prior to the election. Arguably these ballots could have been in the Post Office box as of noon on March 23, 1991, although it should be noted that many of these 68 ballots bore postmark addresses outside of the Chicago metropolitan area. Assuming, however, that these ballots should have been in the Post Office box by noon on March 23, 1991, these 68 ballots, even if cast by eligible voters, could not have affected the outcome of this election where the smallest margin of victory was nearly 1000 votes.

Finally, as noted above 5,936 ballots were voted out of 15,373 mailed or a return of 39%. The return is substantial when compared to the rate of return in mail ballot elections in large locals throughout the country. Further a comparison of voter turnout

in previous Local 705 elections held within the past ten years shows an increase in voter participation by more than two times the average response in prior elections. In the 1981 Local Union officer election, 20% of the membership voted. While the voter turnout increased in the 1984 Local Union officer election, the most recent contested Local Union officer election, only 24% of the members voted in 1984. Nine and ten percent of the members participated respectively in the 1981 and 1886 International Union Convention delegate elections.

Based on the foregoing, the Election Officer does not find it probable to conclude that a significant number of ballots cast by members of Local 705 were not appropriately received and counted in this election.

#### C Different Ballot Labels

One protestor contends that an irregularity in the voting is evident due to the difference appearance of the labels identifying the voting member on some of the return ballot envelopes. To prevent fraud and to insure that duplicate ballots were not sent to persons other than the appropriate member, a special label initialed by a member of the Regional Coordinator's staff was used for all return ballot envelopes where a ballot was remailed with a new address or a duplicate ballot was requested and mailed. This practice does not violate the *Rules* or suggest an irregularity in the voting process.



D Void Ballots - No Label

The protestors contend that numerous ballots were voided because no identifying label was affixed to the ballot return envelope. The protestors further contend that members removed the labels out of fear of reprisal.

The instructions contained in the ballot packet and on the ballot specifically stated that the identifying labels on the return ballot envelope must remain intact. Obviously, the identifying label on the return ballot envelope must be checked to determine eligibility and to prevent multiple votes from one member. Thus, if an identifying label is absent from a return ballot envelope, that ballot package is voided without being opened. The voiding of ballots due to the absence of an identifying label does not evidence an irregularity in the voting process or a violation of the *Rules*.

The Office of the Regional Coordinator has reviewed all void ballots. Thirty-three ballot envelopes or one half of one percent of the ballots cast were declared void due to the absence of an identifying label. The Election officer determines that this number is much too small to indicate that members were fearful of intimidation. Moreover, the relatively high turnout in this election, when compared to other delegate and alternate elections and particularly prior elections conducted in Local 705 dispels a conclusion that members failed to participate in the election process due to fear or any

other reason Lastly, thirty-three ballots would have no effect on the outcome of this election

### E Challenged Ballots

The protestors contend that ballots were improperly challenged, and thus wrongly not counted Specifically, they allege that members on dues check-off and employed by UPS were challenged because their dues were delinquent They contend that the ballots should not have been challenged since, given that these members' dues are paid by checkoff, any dues delinquency shown for any voter, could not affect his good standing in the Local or his eligibility to vote

Further the protestors contend that certain members who were mailed and cast ballots did not appear on the election day roster They allege that their names were improperly added to the roster by the Election Officer staff during the count and further allege, in apparent contradiction to the prior allegation, that these members' ballots were improperly challenged

There were 631 challenged ballots out of the total number of ballots cast Of the total number of challenges, 222 were cast by members employed by UPS Of these, 164 challenges were based on dues delinquencies Thus, 35% of the challenged ballots were cast by members employed by UPS with 26% being challenged on the basis of

dues delinquency Members employed by UPS represented 35% of the membership who voted 35% of the ballots challenged were cast by members employed by UPS It follows that the percentage of challenges of members employed by UPS was directly proportional, and not disproportionate, to the total number of challenges demonstrating the propriety of such challenges

As the protestors correctly note, a member on check-off may not be denied good standing status, and denied the right to vote, due to a delinquency caused by the failure of his employer to properly deduct and remit dues in any month in which the member had earnings IBT Constitution, Article X, § 5(c) It is possible therefore that some or even all of the challenges, had they been resolved, would have resulted in the counting of the challenged ballots However, the number of challenges in their entirety was not sufficient to affect the outcome of the election Clearly the challenges to the 164 ballots cast by members employed by UPS was insufficient to affect the outcome of the election

On election day thirty-one ballots were received from individuals whose names did not appear on the election roster All names were added to the roster and the ballots were challenged and not counted Of the 31 individuals not on the election roster, 11 were also not on the mailing roster but had called and requested ballots It is reasonable to assume that the remaining 20 challenged voters may have become inactive members,

e.g. taken a withdrawal card, retired, between the date of mailing and the date of the election. Moreover, three of these individuals were employed by Local 705, thus negating any inference that the election day eligibility roster was manipulated to harm the Membership Slate. Finally, these thirty-one votes would not have affected the outcome of the election.

#### F The Counting of Ballots Cast by Allegedly Ineligible Voters

The protestors cite two instances in which they contend that votes cast by ineligible members were counted. First, they allege that members employed by PIE and Transcon could not have been eligible to vote since these employers are no longer in business and did not remit dues. Second, they state that members who are employed as gas station owner/operators are ineligible to vote. The protestors also complain that they were not allowed to lodge a standing challenge to all members employed by Transcon or PIE and all owner/operators.

##### 1 Members employed by PIE/Transcon

To be eligible to vote in the Local 705 delegate election a member must be a member in good standing having paid dues through the month prior to the month of the election, February of 1991. The protestors contend that Transcon and PIE went out of

business in 1990 so that any member formerly employed by these employers could not have been eligible to vote

Initially, the Election Officer would note that lay-off or discharge alone does not render the member ineligible as long as the member continues to pay dues. IBT Constitution, Article X, § 5(c) and Article XVIII, § 6. Further, a review of the voting records indicates that only 62 members previously employed by Transcon or PIE cast a ballot. Of these 62, 22 members' votes were challenged. Thus, 40 members employed by Transcon/PIE had their ballots counted. These 40 votes were insufficient to affect the outcome of the election.

## 2 Gas Station Owners/Operators

The protestors also allege that members who are gas station owners/operators should not have been found eligible to vote. The protestors essentially claim that these members were coerced into signing "sweetheart" contracts with the Local

The IBT Constitution and the *Rules* do not prohibit owners/operators, i.e. owners of businesses who work at the craft, from membership in the IBT. Indeed the IBT Constitution provides in Article II §2(b) and (c) that owner/operators or vendors are eligible for membership in the IBT. The protestors do not contend that these gas station owner/operators are not members in good standing. Whether these members were

"forced" or "bribed" to join the IBT at some point in the past does not affect their eligibility to vote as long as they are members and meet all other constitutional requirements. The Election Officer by letter dated March 20, 1991 advised Mr. Ellis and Mr. Cook, see Election Office Case No. P-642-LU705-CHI, that the Regional Coordinator would make eligibility determinations with respect to these owner/operators at the election count. The Regional Coordinator rejected the challenges and the Election Officer affirms that determination for the reasons set forth above.

In summary, the Election Officer finds no evidence of irregularity in the mailing, collection or counting of the ballots. Further, even assuming that the Election Office had found that each and every one of the allegations had merit, the results of the election would not have been effected. If one were to count the ballots of the 164 members employed by UPS whose ballots were challenged, the 31 members whose names were not on the election roster, the 33 members who returned ballots with no identifying label and the 68 ballots retrieved from the Post Office which might have been in the Post Office box as of noon on March 23, 1991, and make the improbable assumption that all such ballots had been cast for the Membership Slate while simultaneously voiding all ballots cast by members employed by either Transcon or PIE and assuming that all Transcon or PIE members voted for the Ligurotis Slate, the results of the election would not have been affected as set forth below.

	<u>Daniel C Ligurotis, Jr</u>
	2,988 votes
	- 40 TRANSCON/PIE
TOTAL	<u>2,948</u>
	<u>John B McCormick</u>
	1,992 votes
	+ 31 Not on roster
	+ 164 UPS challenges (delinquent dues)
	+ 68 Ballots received after count
	+ 33 Void Ballots - no labels
TOTAL	<u>2,288</u>

Therefore the protests relating to the allegations set forth above are DENIED

### III Allegations of Campaign Misconduct by the Ligurotis Slate and the Local

The protestors contend that the Ligurotis Slate and/or the Local violated the *Rules* in several respects. First, the protestors state that the worksite list provided by the Local pursuant to the determination of the Election Officer in Election Office Case No P-514-LU705-CHI et al was incomplete. The protestors also contend that members of the Ligurotis Slate had access to the membership list and copies of the membership list used by the Election Officer staff on the day of the election. The protestors further allege that the Local and the Ligurotis Slate improperly instituted a lawsuit against certain members of the Membership Slate in order to intimidate the slate members and the members of the Local in general from voicing any opposition to the incumbent

leadership of the Local or voting for the Membership Slate. The protestors further contend that funds of the Local were improperly used to pay legal expenses of the Ligurotis Slate. Finally, the protestors allege that a letter written by Daniel C. Ligurotis, Sr. about the election, and reproduced and distributed with Local Union funds after the election, violated the *Rules*. Each of these allegations will be discussed separately below.

#### A. Worksite List

Article VIII §1 of the *Rules* provides that all delegate candidates will have the right to inspect collective bargaining agreements or to be provided with a list of sites with addresses where any and all Local members are employed. Candidates on the Membership Slate sought to avail themselves of this right on or about February 15, 1991. As set forth in the determination of the Election Officer in Election Office Case No. P-514-LU705-CHI et al., the Local did not diligently comply with this request. The facts, as found in Election Office Case No. P-514-LU705-CHI et al., show that members of the Membership Slate reviewed approximately 450 collective bargaining agreements on two separate dates. In addition, the Local provided additional addresses for approximately another thirty employers on those dates.

Several protests were filed concerning the compliance of the Local with the *Rules* relating to the inspection of collective bargaining agreements. The Election Officer



determined that Local 705 had violated the *Rules*, Article VIII § 1, and granted the protests. As a result, the Local was required to provide a worksite list and also required to bear the expense of a campaign mailing by the Membership Slate to the entirety of the membership of Local 705.

To the extent the protestors allege that they were not given an opportunity to review the collective bargaining agreements, the Election Officer determines that his decision in Election Office Case No. P-514-LU705-CHI et al. addressed that protest and provided a remedy. Under the *Rules*, a Local Union may comply with a request to review the collective bargaining agreements by providing such access or by providing a worksite list. Since the Membership Slate was given a worksite list, it was not also entitled to review the collective bargaining agreements. However, the Election Officer will consider whether the Local sufficiently complied with the remedy ordered, production of a complete worksite list, and, if not, whether the failure to comply with the remedy may have affected the outcome of the election. *Rules*, Article XI §1 (b) (2).

A review of the worksite list provided by the Local pursuant to the order of the Election Officer reveals that there were 92 employers listed without a useful worksite address, i.e. the address listed was a Post Office box or an out of state address. During the investigation of these protests the Adjunct Regional Coordinator also found that 32 employers were excluded from the list that was received from the Membership Slate. The Local contends that it provided the best list that was available given the limited time

allowed by the determination of the Election Officer. However, the Election Officer finds that the Local was clearly on notice that a complete list was to have been given. If a complete list could not have been provided in the time ordered by the Election Officer, the Local clearly was under a duty to gather and provide the additional information as it became available. Thus, the Election Officer determines that the Local failed to comply with his order as set forth in the determination dated March 1, 1991 in Election Office Case No. P-514-LU705-CHI et al.

The next inquiry, therefore, is whether said violation may have affected the outcome of the election. First, it must be noted that the portion of the remedy in Election Office Case No. P-514-LU705-CHI et al. provided for a mailing to the membership by the Membership Slate at the expense of Local 705. The mailing was completed on the very day that the ballots were mailed. Therefore, the Membership Slate was provided with access to all members pursuant to the order of the Election Officer.

In addition, the Election Officer has determined that the worksite locations either omitted or not adequately identified by the Local employed 937 members not 3000 as alleged in the protest. Most of the employers whose worksites were omitted employed no more than one or two Local 705 members, only two employed more than ten members.

Assuming that none of these members working at these worksites voted, but if work addresses had been provided these members would have voted at the same rate as the membership in general and further assuming, albeit improbably, that all of these members would have cast their vote for the Membership Slate, the Membership Slate would have received an additional 365 votes. These 365 votes, even if coupled with the improbable assumptions about voting patterns set forth in Section II above would be insufficient to affect the outcome of the election. Therefore, the Election Officer denies this portion of the post election protest since any violation committed in connection with the providing of the worksite list could not have affected the outcome of the election.

#### B Membership List

The protestors also contend that they were not given access to a membership list both during the campaign period and on election day. With regard to the inspection of the membership list during the campaign, the Election Officer notes that the Membership Slate did request to inspect the membership list. Such list was presented for inspection by the Local on one of the dates scheduled to review collective bargaining agreements. Due to the difficulties in reviewing the collective bargaining agreements, the Membership Slate did not review the membership list on that date.

The Membership Slate made no other or further requests to inspect the membership list until the day prior to the election count. Prior to these post-election

protests, no protest other than the protests concerning worksites was ever filed regarding membership list inspection. An election is not to be set aside on the basis of an alleged violation of the *Rules* which occurred long before the conclusion of the election but which was not protested until after the election. In re Barclay, 91--Elec App -111

On March 22, 1991, the day prior to the date the ballots were counted, Adjunct Regional Coordinator Jonathan Rothstein determined that staff of Local 705 intended to use a membership list to check off the names of members who voted in order to permit the Local to continue its past practice of stamping the membership cards or dues records of voting members who requested that their cards be so stamped<sup>3</sup>. Mr McCormick of the Membership Slate was advised by Mr Rothstein, as was Mr Liguoris, that the Membership Slate would therefore be allowed to copy the names of voting members off of the official eligibility list during the vote count. Mr McCormick did not object to this procedure. On the day of the count, Mr McCormick requested that Membership Slate candidates and/or observers be allowed to use tape recorders to record the names of voters while eligibility was being determined. Mr Rothstein agreed to this method of recording. After eligibility determination was completed, Mr McCormick advised Mr Rothstein that the Membership Slate did not wish to review or copy names off the

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<sup>3</sup>Although the right to note the identity of voting members was sought and granted on the basis of the Local's interest, not the interest of the Liguoris Slate, the Election Officer, to avoid any hint of impropriety, determined that the Local 705 staff should be counted as Liguoris Slate observers and thereby reduced the number of Liguoris Slate observers permitted to watch the event.

membership list. Thus, the Membership Slate did not examine or copy the names of voters from the eligibility list, although given an opportunity to do so.

In accordance with the foregoing, the Election Officer determines that the Membership list issues raised by the protestors do not constitute a violation of the *Rules*. During the thirty day period prior to the Election, the Local 705 membership list was made available for inspection by the Membership Slate. Whether or not that inspection was thwarted by the actions of Local 705, no further request was ever made. No protest was ever filed. On the day of the count the Membership Slate was offered the opportunity to review and inspect the election day eligibility roster, the list of members eligible to participate in the Local 705 election. The Slate declined the offer. There was no violation of the *Rules*.

#### C Lawsuit Filed by Local 705 and Members of the Liguoris Slate

The protestors contend that a lawsuit filed in the United States District Court for the Northern District of Illinois by Local 705 as a plaintiff and naming members of the Local including candidates on the Membership Slate and "John Doe" as defendants violated the *Rules*. The protestors allege that the filing of the lawsuit had a chilling effect upon members in exercising their right to vote in the Local 705 delegate election. The protestors also allege that the filing of the lawsuit by Local 705, the use of the

Local Union attorney, Sherman Carmell, and the use of Local Union funds to pay the costs and attorney fees associated with the lawsuit violates the *Rules*

The lawsuit in question was filed on or about February 20, 1991. The allegations contained in the lawsuit concern events which occurred at the Local 705 delegate and alternate delegate nominations meeting held by Local 705 on February 7, 1991. Shortly after the filing of the lawsuit, the Membership Slate filed a protest with the Election Officer contending that Local 705 was in contempt of court for disregarding a standing order of the United States District Court for the Southern District of New York that jurisdiction over all litigation implicating the IBT International Union delegate and officer election lies exclusively in the District Court for the Southern District of New York. The protest also contended that the lawsuit was intended to retaliate against the Membership Slate and its supporters for opposing the incumbent officers of Local 705 who were members of the Liguoris Slate and chill the members exercise of their political rights. The protestors also claim that it was improper to expend Union funds for these purposes. See Election Office Case No P-558-LU705-CHI. By a letter dated March 22, 1991 the Election Officer advised all parties that he was referring the matter to the United States Attorney for the Southern District of New York for the institution of contempt proceedings. The determination of the Election Officer in Election Officer Case No P-558-LU705-CHI was affirmed by the Independent Administrator, 91-Elec App -117(SA) (April 3, 1991)

The protestors contend that the institution of the litigation had a chilling effect on members' rights with respect to participation in the election process and discouraged or stopped Local 705 members from supporting or voting for the Membership Slate. Protestors also point to the caption of the litigation which names "John Doe" as a defendant, thus, according to the protestors, implying that any member who opposes the incumbent leadership may be inserted as a defendant in the lawsuit.

Essentially, the facts do not support the contention of the protestors that either candidates or members were intimidated by the filing of this lawsuit. No candidate withdrew from the Membership Slate or appears to have in any way reduced his campaign activities or his opposition to the Liguoris Slate or to the incumbent leadership of Local 705. The number of pre- and post-election protests filed by the candidates on the Membership Slate clearly shows that they were not intimidated by the lawsuit from voicing their opposition to members of the Liguoris Slate or the incumbent Union leadership.<sup>4</sup>

Further, in terms of the members being intimidated, as noted above, the vote return in this delegate election is significantly greater than the vote return in any election held by Local 705 within the past ten years. The last delegate election, held in 1986,

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<sup>4</sup>For these same reasons, the Election Officer concludes that regardless of his ultimate decision on the remand of Election Office Case No P-515-LU705-CHI, the election results could not have been affected.

Subsequently, and pursuant to the standing order of the United States District Court for the Southern District of New York, the lawsuit was transferred to New York by the Illinois Court. This lawsuit is presently pending before Judge Edelstein of the United States District Court for the Southern District of New York.

The Election Officer is a court officer responsible to the Independent Administrator and ultimately to the Court which appointed him. The lawsuit which the protestors contend was brought, and is being litigated, in violation of the *Rules*, is presently pending before that Court. It would constitute a usurpation of jurisdiction and power for the Election Officer to determine whether the filing and/or litigation of the lawsuit was wrongful or, if so, the nature of the appropriate remedy and against whom it should be imposed. These matters are presently before Judge Edelstein and will be decided by him. Thus, the Election Officer makes no determination as to the merits of the protest concerning the filing of the lawsuit or the continued litigation of the lawsuit or the alleged misuse of Union funds in doing so.

However, the Election Officer is obligated by the *Rules* to certify delegates. Assuming that the litigation is violative of the *Rules* or the Consent Order, the Election Officer is obligated to determine whether the commencement or continuation of the litigation may have affected the outcome of the election. For the reasons set forth below the Election Officer finds that it is not probable that the outcome of the election was affected by this lawsuit.



had a 10% voter turnout. This election had a 39% voter response. Further, the Election Officer in order to allay concerns of the Membership Slate as to threats and intimidation sent a letter to each member of Local 705 urging members to participate in the election and assuring members that the Election Officer remains committed to a fair, honest and open election as set forth in the *Rules*. In that letter, the Election Officer specifically stated that the Election Office would not permit members of Local 705 to suffer retribution based upon their participation in the delegate election campaign or their exercising of their right to vote for whatever candidates or slate of candidates they chose. To the extent that any member may have been intimidated by the filing of the lawsuit or the events of the February 7, 1991 nominations meeting, those members were specifically communicated with by the Election Officer to allay any concerns. The Election Officer believes that the voter response in this delegate election does not evidence any fear of reprisal but, in fact, evidences the openness of the election process. Accordingly, to the extent the post-election protests contend that the filing of the lawsuit by Local 705 may have affected the outcome of the election the protests are denied.

#### D Misuse of Union Funds

The protestors contend that Local Union 705 improperly used Union funds to pay legal fees of Sherman Carmell and/or his associates for their work involving protests filed with the Election Officer. The protests and or appeals specifically referred to by the protestors include Mr. Carmell's participation in Election Office Case Nos. P-558-

LU705-CHI, P-515-LU705-CHI and P-498-LU705-CHI. The protestors claim that the work performed was to benefit the Ligurotis Slate and not the Local. The protestors also contend that Mr. Carmell and his law firm are employers and thus prohibited by the *Rules* from participating in the protest process since such participation constitutes a campaign contribution. The protestors also contend that Mr. Carmell's presence at the count of the Local 705 ballots was an improper use of Union funds.

A Local Union, as an institution, has an interest in assuring that the delegate and alternate delegate election is conducted properly. Further, the *Rules* impose certain obligations and duties upon the Local Union in connection with the delegate and alternate delegate election. To deal with such institutional interest, a Local may hire or retain an attorney to represent the Local in proceedings before the Election Officer. The institutional interests do not include, however, giving support to a particular candidate or group of candidates or defending members of the Union accused of wrongful campaign activities. With these principles in mind, the Election Officer makes the following determinations regarding to the participation of Mr. Carmell and other members of his law firm in proceedings conducted before the Election Officer and/or the Independent Administrator.

First, utilization of Local 705 resources to have Mr. Carmell present at the count does not constitute a violation of the *Rules*. Clearly the Local does have an interest in assuring the integrity of the election process affecting the Local. That interest may be

served permissibly by retaining an attorney to represent the Local at the counting of ballots. Thus the Election Officer does not find that the *Rules* have been violated by the presence of Mr. Carmell at the count.

With regard to Election Office Case No. P-558-LU705-CHI, the filing and appearance by Mr. Carmell on behalf of Local 705 does not violate the *Rules*. The determination of the Election Officer was against Local 705, the plaintiff in the lawsuit, and clearly Local 705 had an interest in being represented. As discussed in Section C above, whether the filing of the lawsuit in and of itself was a violation of the *Rules* and whether any payment to Mr. Carmell for the institution or the prosecution of the lawsuit was a violation of the *Rules* will be determined by Judge Edelstein.

The Election Officer has reviewed all other protests which are either presently under investigation, were determined or were under appeal since the date of the election to ascertain whether Mr. Carmell or any of his associates participated in those protests and, if so, whether the participation was in the service of the Local Union as an institution or on behalf of an individual candidate or member.<sup>5</sup> Based upon this review the Election Officer determines that Mr. Carmell and/or his associates represented

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<sup>5</sup>Election Office Case No. P-498-LU705-CHI mentioned specifically in the post-election protest was determined by the Election Officer on February 22, 1991 and an appeal was held on March 13, 1991. The Election Officer will not determine whether the participation of Mr. Carmell or any of his associates in this matter violated the *Rules* in that matter. The protest concerning his representation is untimely under Article XI §1 of the *Rules*.

candidate interests rather than the Local as an institution in Election Office Case Nos P-515-LU705-CHI, P-600-LU705-CHI and P-609-LU705-CHI

Election Office Case No P-515-LU705-CHI involved an allegation that a member and business agent of Local 705, Frank Snow, attempted, through intimidation and bribery, to obtain the withdrawal of a candidate on the Membership Slate. The Union as an institution obviously has no interest in promoting or protecting such activity. The activity, if it occurred, would inure to the benefit of a particular slate of candidates not the Union. The investigation of this protest was substantial, and included depositions wherein Mr Carmell participated as the attorney for Mr Snow.

The protest in Election Office Case Nos P-600-LU705-CHI and P-609-LU705-CHI involved allegations of intimidation against members and supporters of the Membership Slate as well as allegations that members and supporters of the Liguotis Slate campaigned on time that was either paid for by the Local Union or such member's or supporter's employer. Again the benefit, if any, derived from such alleged violations of the *Rules* inured to a particular slate of candidates, the Local had no institution interest in these protests. It should be noted however that Mr Carmell's participation in these protests was limited to monitoring the telephone interviews conducted of the members against whom the protests were filed.

To the extent that the Local Union expended any Local Union funds in connection with the representation by Mr Carmell or any of his associates in Election Officer Case Nos P-515-LU705-CHI, P-600-LU705-CHI or P-609-LU705-CHI the Election Officer determines that the *Rules*, specifically Article X §1 (3) of the *Rules*, have been violated. That this action constitutes an improper expenditure by the Local Union does not mean, however, that the election results have been affected. The expenditure of Local Union's funds could not have affected the outcome of the election. There simply is no nexus between these expenditures and the outcome of the election.<sup>6</sup>

The Election Officer does not find that Mr Carmell or the other members and associates of his firm are prohibited from participation in the protest process because he or they are employers. A candidate may employ an attorney or other professional to represent his interests in the nomination and election process as long as the candidate pays for such services personally or with campaign contributions obtained from persons entitled to make such contributions under Article X of the *Rules*. Further, Article X §1 (b) (2) of the *Rules* permits candidate use of financial or support services from employers or labor organizations, other than the Union, to pay fees for legal or

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<sup>6</sup>Utilization of Union funds for the benefit of particular candidates is a serious violation of the *Rules*. While the Election Officer will not order a new election, a remedy for this violation is nonetheless appropriate. To the extent that the Local Union has paid for Mr Carmell's or any of his associates services in connection with Election Office Case Nos P-515-LU705-CHI, P-600-LU705-CHI or P-609-LU705-CHI, the Local must be reimbursed either by the individual members represented by Mr Carmell or by the Liguoritis Slate. Local 705 is required to file an affidavit with the Election Office, together with supporting documents, within five (5) days of this decision indicating that the Local Union has been reimbursed for these costs.

accounting services performed in assuring compliance with applicable election laws, rules or other requirements or in securing, defending or clarifying the legal rights of candidates. Participation in the protest process falls within the parameters of this provision of the *Rules*. Moreover, under the Consent Order any officer, member or employee of the IBT who is required to give a statement or be deposed, such as occurred during the investigation of Election Office Case No. P-515-LU705-CHI, has the right to be represented by an IBT member or legal counsel of his or her own choosing during the course of said examination. Thus, to the extent that Mr. Carmell or any of his associates represented individual members and those members or the Ligurotis Slate either paid for his services or the legal services were donated to the individuals, there is no violation of the *Rules*.

E Allegations Regarding the Post-Election Letter of Daniel C Ligurotis, Sr

The protestors here contend that Daniel C Ligurotis, Sr and Local Union 705 violated the *Rules* by preparing, reproducing and distributing, all with Local Union funds, a letter mailed to all members of Local 705 describing the outcome of the Local Union 705 delegate and alternate delegate election and thanking the membership for electing the members of the Ligurotis Slate. The violation, if any, occurred after the election was concluded. The letter constituted an announcement of the election results. Thus, the letter could not have had any possible effect on the outcome of the election.

The protest with respect to the letter, and the funding sources for the duplication and distribution of the letter, are therefore DENIED

### CONCLUSION

The deferred pre-election protest and all post-election protests have been carefully and extensively considered by the Election Officer. With respect to most of these protests as described above, the Election Officer has found that no violation of the *Rules* occurred. With respect to those instances where the Election Officer has found a violation of the *Rules*, the Election Officer has determined that such violations, viewed singularly or together, did not affect the outcome of the election. The voter turnout in this election was significant. The margin of victory was nearly a thousand votes. There is no rational basis for concluding that the outcome of the election was affected by these violations or possible violations found by the Election Officer. To the extent that the Election Officer has determined that violations did occur, and such violations were sufficiently serious to justify a remedy even without a rerun of this election, a remedy was ordered and the remedy is set forth in this decision.

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

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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/cdk

cc Frederick B Lacey, Independent Administrator  
Julie Hamos, Regional Coordinator



IN RE:

JOHN McCORMICK,  
the MEMBERSHIP SLATE, et al.

and

IBT LOCAL UNION NO. 705

91 - Elec. App. - 164 (SA)

DECISION OF THE  
INDEPENDENT  
ADMINISTRATOR

This matter arises out of an appeal from a decision of the Election Officer in consolidated Case Nos. Post-65-LU705-CHI and P-643-LU705-CHI. A hearing was held before me on June 6, 1991 by way of telephone conference, at which the following persons were heard: R. Edward Wilhoite, Jr., on behalf of the Membership Slate; Sherman Carmell, on behalf of Local 705; Robert Walsh, an assistant to Regional Coordinator Julie Hamos; Deborah Schaaf and Jonathan Rothstein, Adjunct Regional Coordinators; and John Sullivan and Barbara Hillman, on behalf of the Election Officer.

Local 705 conducted its election for eighteen delegates and six alternate delegates by mail ballot. There were thirty seven candidates running for the eighteen delegate spots. All but one of the thirty seven candidates were affiliated with either the "Membership Slate," the protestors herein, or the opposing "Ligurotis Team Slate" headed by the incumbent Secretary-Treasurer of the Local, Daniel C. Ligurotis. There were twelve candidates vying for the six alternate positions. All twelve were affiliated with one of these two slates. The Ligurotis Team Slate won every available delegate and alternate delegate position. As explained by the Election Officer in his Summary:

The margin of victory between the winning Ligurotis Slate and the losing Membership Slate was substantial. In the delegate election, the Ligurotis Slate candidate with the fewest votes (Daniel C. Ligurotis, Jr. with 2,988 votes) garnered almost 1,000 votes more than the Membership Slate candidate with the most votes (John B. McCormick with 1,992 votes). In the election for alternate delegate, the margin of victory between the Ligurotis Slate candidate with the fewest votes (Angelo Geraci with 3,006 votes) and the Membership Team candidate with the most votes (Andrew Vallone with 1,989 votes) was also substantial: 1,107 votes.

The Membership Slate filed a number of protests challenging the election results. These protests were properly considered by the Election Officer pursuant to the standard applicable to post-election protests. As stated in Article XI, Section 1 b (2) of the Rules For The IBT International Union Delegate And Officer Election (the "Election Rules"):

Post-election protests shall only be considered and remedied if the alleged violation may have affected the outcome of the election. Each of these protests will be addressed in turn.

The protestors raised several allegations concerning the impartiality of Regional Coordinator Julie Hamos. These very allegations have been previously raised with the Independent Administrator by way of telephone contact with an informer who asked the Independent Administrator to keep his name confidential. On April 1, 1991, the Independent Administrator wrote to the individual registering the complaints regarding Ms. Hamos as follows:

Reference is made to your telephone conversation with my colleague, Stuart Alderoty, on February 26, 1991. During that conversation, you detailed many concerns regarding Julie Hamos, A Regional Coordinator working with Michael H. Holland. I have made inquiries to Mr.

Holland regarding all the issues that you raised in your February 26, 1991, conversation with Mr. Alderoty. Mr. Holland has fully reported to me on those issues. I am satisfied with his report. Mr. Holland has complete confidence in Ms. Hamos' integrity and impartiality and I accept and support Mr. Holland's judgment wholeheartedly.

Even accepting everything you said to be true, I do not find a conflict of interest on Ms. Hamos' part or any wrongdoing on the part of Ms. Hamos, or Mr. Holland.


Given the Independent Administrator's views as expressed in his letter of April 1, 1991, there is nothing further to be said regarding the allegations which have been dredged up once again in this protest.

The protestors also challenge, on a wider scale, the impartiality and the conduct of the Election Officer and his staff. As for the allegations regarding Ms. Hamos, they are completely without merit. The record of the Election Officer's efforts to ensure a free, fair and honest election in this Local is comprehensive. He has investigated and decided numerous protests. The extent of his treatment of the many protests which are the subject of this appeal is a tribute to the Election Officer's commitment to preserve the integrity of the election in this Local. These baseless attacks on the integrity of the Election Officer do nothing to advance the position of the Membership Slate, but rather reflect the degree to which it will go to salvage their failed attempt to secure a single delegate or alternate delegate spot

All the other issues advanced by the protestors at the hearing before me are rejected for the reasons expressed by the Election Officer in his Decision and Summary.

I should note that by letter dated June 22, 1991, a member of the Membership Slate indicated that his Slate "feels insulted because [my] office never mailed any decisions out regarding the hearing that was held on June 6, 1991 . . . ." So that the record is clear, I issued a decision from the "bench" at the conclusion of the June 6 hearing affirming the Election Officer's ruling. I further indicated that a written decision would follow at a later date. The additional arguments and requests made in the June 22, 1991, letter, while out of time, have been considered and do not change the result.

For the reasons expressed herein, the decision of the Election Officer is affirmed in all respects



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

Dated: June 27, 1991