

OFFICE OF THE ELECTION OFFICER
INT. NATIONAL BROTHERHOOD OF TEACHERS
25 Louisiana Avenue, NW
Washington, DC 20001

Michael H. Holland
Election Officer

(202) 624-8778
1-800-828-6496
Fax (202) 624-8792

May 29, 1991

VIA UPS OVERNIGHT

Richard Kraft
4432 176th S.W. #4
Lynnwood, WA 98037

Allen McNaughton
Secretary-Treasurer
IBT Local 174
553 John St.
Seattle, WA 98109

Re: Election Office Case No. P-777-LU174-PNW

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*"). The protest, filed by Richard T. Kraft, raises two issues, one with respect to the payment by Local 174 of Mr. Kraft's Convention-related expenses and the second with respect to costs incurred by Mr. Kraft with respect to his discharge arbitration and other proceedings relating thereto.

Mr. Kraft was elected as a delegate to the 1991 IBT International Union Convention by the members of Local Union 174. Assuming that his election is certified by the Election Officer, the Local Union is obligated under the *Rules* to pay his Convention-related expenses. Among the expenses for which a Local Union is obligated to pay is the salary or wages that its delegates or alternate delegates would otherwise receive from their employers but for being at the Convention site. Advisory Regarding Convention Expenses issued April 19, 1991 ("Advisory").

Attendance at the 1991 IBT International Union Convention is Union business. However it is not a vacation or holiday nor is it an opportunity for an IBT member to earn additional compensation. Thus while it is therefore appropriate to require the Local Union to reimburse its delegates and, if applicable, its alternate delegates for the salary or wages lost by Convention attendance, it would be inappropriate for a Local Union to be obliged to provide such delegates or alternate delegates with a sum greater than the amount actually lost by such delegate or alternate delegate because of his/her attendance at the Convention.

Thus, to the extent that a delegate or, if applicable, alternate delegate, is presently unemployed due to accident, injury, layoff or otherwise, the Local is responsible for paying the benefit monies actually lost by the delegate for his/her attendance at the 1991 IBT International Union Convention. With respect to a member receiving unemployment benefits, the Local would be responsible for paying the unemployment benefit actually not received because of such Convention attendance. Similarly with members receive workers compensation or health and welfare benefits, the Local is responsible for reimbursing the amount of benefits actually not received because of Convention attendance.

For a member who does not have regular employment but, for instance, works as a "casual" or on a hiring hall - call basis, the average, for the three months preceding the Convention week, of the actual straight time hourly wages received by the delegate or alternate in a calendar week shall be deemed his/her wages for the Convention week. If the Local itself has no records or access to records with respect to the delegate or alternate delegate's receipt of such monies, it may require that the member produce documents evidencing the wages earned by him/her during the three month averaging period.

Thus in this case, since Mr. Kraft is no longer regularly employed due to his discharge from his prior regular employment with Yellow Freight, Local 174 is not responsible for reimbursing him with the wages he would have received from Yellow Freight prior to his discharge. If Mr. Kraft's discharge grievance is ultimately upheld and back pay ordered, the Local Union will be required, to the extent that Yellow Freight is not so required, to reimburse Mr. Kraft for the difference between the monies received by him from Local 174 as wage reimbursement for 1991 IBT International Convention Attendance, and forty hours of straight time wages at the Yellow Freight rate.

To the extent that Mr. Kraft is presently receiving unemployment compensation benefits but does not receive them for the period of the Convention week, the Local will be responsible for reimbursing him with the dollar amount of the unemployment compensation benefits lost by Mr. Kraft because of his Convention attendance. To the extent that Mr. Kraft is not receiving unemployment benefits but is receiving wages, albeit as a casual worker or on a part-time basis, the Local will be required to reimburse Mr. Kraft in accordance with the three month averaging formula described above.

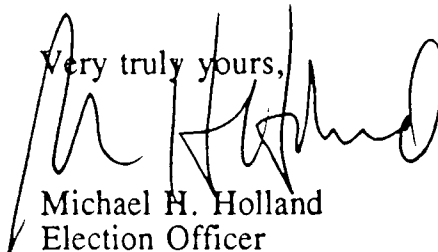
With respect to Mr. Kraft's request that the Election Officer order that Local 174 pay the entirety of legal fees incurred by Mr. Kraft in connection with his discharge arbitration, and attendant legal proceedings such as unemployment compensation hearings, the Election Officer notes that he has not to date found that Mr. Kraft's former employer, Yellow Freight, have violated the *Rules* in discharging him. The Election Officer has also not yet found that Local 174 representation of him in connection with that discharge and/or his receipt of unemployment compensation benefits has violated the *Rules*. It would thus be inappropriate, and itself violative of the *Rules*

Richard Kraft
Page 3

and the March 14, 1991 Consent Order, for the Election Officer to grant Mr. Kraft's for a monetary remedy, payment of attorney's fees, against Local 174 prior to decision by the Election Officer that Local 174 has violated the *Rules* in its representation.¹

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
Election Officer

MHH/pjm

cc: Frederick B. Lacey, Independent Administrator
Christine M. Mrak, Regional Coordinator

¹There is presently pending before the Election Officer another protest, Election Office Case No. P-743-LU174-PNW, concerning the propriety at Mr. Kraft's discharge and Local 174's representation of him in connection with that discharge.