



OFFICE OF THE ELECTION OFFICER
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Michael H. Holland
Election Officer

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Chicago, IL 60604
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October 14, 1991

VIA UPS OVERNIGHT

Joe E. Smith
225 Pine Street Ext.
Campobello, SC 29322-9204

Frank H. Wood
Secretary-Treasurer
IBT Local Union 28
5318 Wade Hampton Boulevard
Taylors, SC 29687

Re: Election Office Case No. P-944-LU28-MID

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Joe E. Smith. In his protest, Mr. Smith contends that Local 28 improperly issued him a withdrawal card on July 2, 1991. Mr. Smith states that he should not have been issued a withdrawal card claiming that he remains entitled to retain membership in Local 28 since he continues to challenge the propriety of his termination from employment. He states that the Election Officer has jurisdiction over his protest since the issuance of the withdrawal card will prevent him from voting in the upcoming election for International officers.

Mr. Smith filed his protest on October 1, 1991. He was notified of the issuance of the withdrawal card on July 2, 1991. The merits of this appeal cannot be reached since Mr. Smith's protest is untimely. Article XI, §1(a)(1) of the *Rules* provides that protests, such as Mr. Smith's, "must be filed within 48 hours" of the offending conduct or said protest "shall be waived" (emphasis added). The Independent Administrator has ruled, overturning the Election Officer, that the violation alleged is not a continuing one and no relief may be afforded if the protest is not timely filed. See *In re: Oxner*, 91-Elec. App.-98 (a protest filed 17 days after a withdrawal card issued held untimely).

Mr. Smith's eligibility to vote was terminated upon the issuance of the withdrawal card on July 2, 1991. Thus, Mr. Smith should have filed his protest within 48 hours of receiving notice of the issuance of the withdrawal card. His protest was not filed until October 1, 1991, almost three months later. Therefore, in accordance with the ruling of *In re: Oxner, supra*, the protest must be deemed untimely and is **DISMISSED** on that basis.

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

Joe E. Smith
Page 2

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,

A handwritten signature in black ink, appearing to read "Michael H. Holland". The signature is stylized and cursive.

Michael H. Holland

MHH/ca

cc: Frederick B. Lacey, Independent Administrator
Grant G. Crandall, Regional Coordinator