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Election Officer

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October 23, 1991

**VIA UPS OVERNIGHT**

Ron Wells  
Secretary Treasurer  
IBT Local Union 85  
459 Fulton Street  
San Francisco, California 94102

Art Persyko  
1017 Castro Street  
San Francisco, California 94114

Dave Reardon  
640 Waller Street  
San Francisco, California 94117

**Re: Election Office Case No. P-984-LU85-CSF**

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules") by Ron Wells, Secretary-Treasurer of IBT Local Union 85. In his protest, Mr. Wells complains that literature was being distributed by the two certified delegates to the 1991 IBT International Union Convention from Local 85, which literature used the Local Union number and the International logo without prior authorization from either the Local or the International. Mr. Wells further contends that the individuals disseminating this material, Art Persyko and Dave Reardon, did so on employer paid time. The protest was investigated by Regional Coordinator Donald Twohey.

Art Persyko and Dave Reardon were elected and certified as delegates to the 1991 IBT International Union Convention from Local 85. During the delegate election process for Local 85, Mr. Persyko and Mr. Reardon ran for the delegate positions as a slate called the "New Priorities Slate". They sought and obtained election committed to the candidacy of Ron Carey for IBT General President.

Sometime after the Convention, but prior to October 3, 1991, Mr. Persyko and Mr. Reardon prepared a report on the Convention--written from their partisan political point of view--for the members of Local 85. This report is typewritten in letter form. The cover page is entitled "Local 85 Delegates to 24th IBT Convention Report to Members" and prominently displays the IBT logo. The cover page also states in bold type, "Presented to the Local 85 General Meeting, 10/3/91 by Art Persyko and Dave Reardon the New Priorities Slate."

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The protest filed by Mr. Wells alleges that Mr. Persyko and Mr. Reardon have utilized the Local Union number and the International Union insignia without prior authorization from either the Local or the International as required by the Local bylaws and the International Constitution. Mr. Wells further notes that this literature does not contain any disclaimer indicating that it is campaign literature not approved by Local Union 85. Finally, Mr. Wells alleges that Mr. Reardon and Mr. Persyko were distributing this literature on employer paid time; Mr. Wells bases this allegation on information he received from a business agent of the Local advising him that Mr. Persyko was distributing the report at a Roadway location on the same day that Mr. Persyko was scheduled to work at Consolidated Freight.

Review of the leaflet clearly demonstrates that it is partisan political material and not an official publication of either Local 85 or the International Union. As noted above, the cover page of the report indicates that it was prepared by Local 85 delegates and further states the names of the delegates and their affiliation with the New Priorities Slate. The contents of the report also clearly establish that it is not a Local or International Union publication.

Article X, §1(b)(3) of the *Rules* prohibits the use of the Union's official stationery with the Union's name or insignia or other similar identifying marks for campaign purposes. The document at issue here, however, is not printed on the Union's official stationery. The literature as a whole does not create the impression that it was sponsored or published by either the International or the Local Union. Under such circumstances the utilization of the Local Union number on campaign material would be permitted under the *Rules*. See Election Office Case No. P-409-LU693-PGH, affirmed in relevant part, 91-Elec.App.-72. Similarly, utilization of the International Union insignia on the campaign literature was not improper. See Election Office Case No. P-226-LU182-PGH, affirmed 91-Elec.App.-40 and Election Office Case No. P-542-LU420-CLA, affirmed 91-Elec.App.-87. Accordingly, the Election Officer determines that neither Mr. Persyko nor Mr. Reardon violated the *Rules* by use of the Local Union number or the International Union logo on the campaign material prepared and distributed by them.

The investigation conducted by the Election Officer revealed that Mr. Persyko and Mr. Reardon distributed their report to members in a variety of work locations throughout the Local. However, such distribution occurred during Mr. Persyko's and Mr. Reardon's own time, i.e., on non-working time. There is no evidence that any distribution occurred during work time. While Mr. Persyko distributed the pamphlet at Roadway

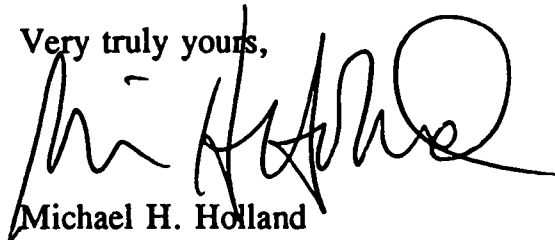
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on the same day he was scheduled to work at Consolidated, he did so prior to the start of his work day. Thus, the *Rules* have not been violated.<sup>1</sup>

Based on the foregoing, this protest is DENIED.

If any interested party is not satisfied with this determination, they may request a hearing before the Independent Administrator within twenty-four (24) hours of their receipt of this letter. The parties are reminded that, absent extraordinary circumstances, no party may rely upon evidence that was not presented to the Office of the Election Officer in any such appeal. Requests for a hearing shall be made in writing, and shall be served on Independent Administrator Frederick B. Lacey at LeBoeuf, Lamb, Leiby & MacRae, One Gateway Center, Newark, New Jersey 07102-5311, Facsimile (201) 622-6693. Copies of the request for hearing must be served on the parties listed above, as well as upon the Election Officer, IBT, 25 Louisiana Avenue, N.W., Washington, D.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", written in a cursive style.

Michael H. Holland

MHH/ca

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

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<sup>1</sup>Campaigning on non-work time, which is time paid by an employer such as break time, vacation, holidays or the like, does not violate the *Rules*. See *Rules*, Article VIII, § 10(a) and (b).