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April 16, 1991

VIA UPS OVERNIGHT

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Secretary-Treasurer
IBT Local Union 510
229 West Market
Orrville, OH 44667

Walter Frank Snyder
c/o Local 510
229 West Market
Orrville, OH 44667

Re: Election Office Case No. Post-35-LU510-CLE

Gentlemen

A post-election protest was filed in accordance with Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") The protest was filed by Joseph Stauffer, who was a candidate in Local 510's delegate election and is Secretary-Treasurer of the Local In his protest, Mr. Stauffer alleges that the Election Officer Regional Coordinator, Joyce Goldstein, permitted ineligible members to cast ballots. Mr. Stauffer also alleges that the Election Officer improperly counted ballots which were received in the Post Office Box after the voting deadline which was 12 00 noon on February 8, 1991 Mr. Stauffer further alleges that the Regional Coordinator violated the *Rules* by conducting a second count without notifying candidates and observers of their right to be present Finally Mr. Stauffer further complains that Joyce Goldstein committed *Rules* violations by tossing a coin to determine the outcome of the election Each of Mr. Stauffer's allegations will be reviewed in separately numbered paragraphs below

I. Background and Election Results

Local 510 conducted its election by mail ballot and elected one delegate Ballots were due on February 8, 1991 The Election Officer representatives went to the Post Office to pick up the ballots At the time, those representatives were told by Post Office officials that they were given all the ballots that had been returned to the Post Office as of 12 00 noon on February 8, which was the deadline for the receipt of ballots However, the Post Office subsequently notified the Regional Coordinator that additional ballots had been received at the Post Office prior to the 12 00 noon February 8, 1991 deadline

The number of ballots originally picked up by the Election Officer representatives at the Post Office on February 8, 1991, was 198. 100 votes were received by delegate candidate and incumbent Secretary-Treasurer Joseph Stauffer and 82 votes were received by delegate candidate Walter Frank Snyder.

A few days later, the Post Office transmitted to Joyce Goldstein an additional 118 ballots had been received at the Post Office Box. An examination of the ballots revealed all but one were postmarked as of February 7, 1991 or earlier, one was postmarked after February 8, 1991. The investigation revealed that the Post Office had inadvertently failed to give the 117 time received ballots to Michael Malone, the Adjunct Coordinator who picked up the ballots on February 8, 1991.

Because the number of additional ballots could have affected the outcome of the election, the parties and the Election Office Regional Coordinator agreed, in writing, to count the additional ballots, which were post-marked February 7, 1991 or earlier. After the additional ballots were counted, and the totals determined, Joseph Stauffer had 146 votes and Walter Snyder had 146 votes, a tie. The Election Office Regional Coordinator Joyce Goldstein resolved the tie by tossing a coin. Walter Snyder won the coin toss.

II. Notification of Time, Place and Location of the Second Ballot Count.

Mr Stauffer alleges that Joyce Goldstein conducted the counting of the additional ballots without notifying any candidates or observers of their right to be present at the count. The investigation disclosed that Joyce Goldstein sent a letter to both Mr Stauffer and Mr Snyder on February 19, memorializing their previous oral agreement to count the additional ballots and to count them at noon on February 26, 1991. Attached to the letter was the following agreement.

AGREEMENT

On February 8, 1991, the ballots were counted for the delegate election for Teamsters Local 510. Prior to the count, Election Officer representatives went to the Orrville, Ohio Post Office to pick up the ballots. The Election Officer representatives were told that they were given all the ballots that had been returned to the Post Office as of noon on the day of the count. However, additional ballots were at the Post Office at noon of the day of the count, but they were inadvertently not given to the Election Officer representatives. The number of additional ballots could affect the outcome of the election.

The parties and the Election Officer Regional Coordinator have agreed to count the additional ballots which were postmarked February 7, 1991 or earlier, at noon on February 26, 1991. Until the time of the additional count, the Election Officer Regional Coordinator will keep the ballots in a locked, secure place.

This agreement was signed by Mr Stauffer, Mr Snyder and Ms. Goldstein. Moreover, the evidence established that Joseph Stauffer was present at the time of the counting of the additional ballots; he entered and exited the counting room frequently during that period. Thus Mr. Stauffer also acted as his own observer for a substantial part of the count. ~~Richard Bilitur, Recording Secretary, was also present as an observer for Mr. Stauffer and observed some aspects of the counting and in fact signed the certification page of the final tally.~~

The evidence clearly establishes that all candidates were notified of their right to be present at the count and that both candidates signed a written agreement consenting to the additional count. Accordingly, there is no evidence to support this allegation and the protest is therefore DENIED.

III. Irregularities in Coin Toss

Mr Stauffer also alleges that Ms Goldstein resolved the tie vote between the two delegates in an unfair and dishonest manner. The investigation conducted by the Washington, D C staff of the Election Officer disclosed the following facts ¹. At the conclusion of the first count Joseph Stauffer received 100 votes and Walter Snyder received 82 votes. The Post Office sent the Regional Coordinator an additional 118 ballots which had been received at the Post Office. Of those 118 additional ballots, one was postmarked after the February 8, 1991 date for receipt of ballots. Additionally, the Election Officer determined that three other ballots were void. Four ballots were set aside as challenged ballots; when challenged ballots were resolved, the challenges to all four were sustained. Of the remaining 110 ballots, Mr. Snyder received 64 additional votes and Mr Stauffer received 46 additional votes.

Once the ballots were counted and all eligibility challenges resolved, both candidates were tied with 146 votes each. Article XII, § 5 (g) of the *Rules* provides

In the event of a tie vote, the candidates shall resolve such tie by lot, except in the case of International Officer elections, which case there shall be a rerun election between the tied candidates.

Once the count was concluded and Joyce Goldstein discovered that each candidate had received an equal number of votes, she informed those present that she would, in

¹On March 7, 1991, Mr Stauffer wrote the Election Officer a letter protesting the assignment of Joyce Goldstein to the investigation of this post-election protest. Pursuant to Mr Stauffer's protest, the Election Officer informed Mr Stauffer that despite the fact that he had "full faith in Ms Goldstein's integrity, impartiality and competence, to address Mr Stauffer's concerns and avoid any possible appearance of partiality in the investigation of this matter, I hereby notify all parties that the matter will be investigated by the Washington staff of the Election Officer." (March 25, 1991 letter from Michael Holland, Election Officer, to Mr. Stauffer and Mr Frank Snyder.)

accordance with the *Rules*, resolve the tie by flipping a coin. Mr. Snyder, who had not theretofore been present at the count, was contacted at work. He stated would be released from work in an hour and requested that Ms. Goldstein wait until he arrived, which she agreed to do.

When Ms. Goldstein informed those present that she would resolve the tie by a coin toss, Mr. Stauffer became very angry and stated that he would not agree to a coin toss. Shortly thereafter, he left the room along with Mr. Biliter and did not return. A few individuals who were supporters of Mr. Stauffer remained in the room to observe the coin toss. Election Officer representatives who had participated in the count were also present.

After the coin was tossed, all present agreed that the toss was improper. The coin did not flip. Ms. Goldstein thus walked over to where the coin had landed and tossed it a second time. All of those present expressed satisfaction with the second toss due to the fact that the coin flipped a number of times in the air.

Ms. Goldstein states that none of the observers and/or candidates could see the side of the coin of the first coin toss.² Mr. Stauffer claims that the observers then present were able to see the coin when it landed and that it landed in his favor. I cannot credit Mr. Stauffer's assertions with respect to this matter because it is lacking in credibility. All of the Election Office staff present stated that no one, including themselves, knew on which side the coin had landed. Finally, the investigation disclosed that the coin landed several feet away from where the observers, candidates and Election Office representatives were standing. Ms. Goldstein was the only person who went over to pick up the coin. The distance between where the observers and candidates stood and where the coin landed makes it highly unlikely that anyone else could have seen the coin.

The record reflects that Ms. Goldstein resolved the tie in accordance with the requirements of Article XII of the *Rules*. The evidence further establishes that there is no merit to Mr. Stauffer's claims that Ms. Goldstein committed fraud in the inadequate tossing of the first coin. Moreover, there is no evidence that Mr. Stauffer would have won the first coin toss. Mr. Snyder won the second coin toss and was declared the winner of the election. Accordingly, Mr. Stauffer's protest with respect to this issue is DENIED.

IV. Allegations That Ineligible Members Were Allowed to Vote

Mr. Stauffer also alleges that Joyce Goldstein ~~allowed ineligible members to vote~~. Mr. Stauffer was interviewed by Election Officer staff person Carolyn Klam in reference to this allegation. Mr. Stauffer informed Ms. Klam that he would not provide any information about any ineligible members until he was permitted to review the Election

²Mr. Snyder alleges that the coin was still rolling when it was picked up.

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Day Count Roster Mr Stauffer stated that he could only provide the Election Officer with specific names after he reviewed the roster

Local 510 is a non-TITAN Local Prior to the election, the Regional Coordinator reviewed several months of members' dues history and worked with Local 510 officials to eliminate ineligible members from the list Due to the fact that Local 510 is not on the TITAN computer system, the Election Day Roster was generated by the Local under Ms Goldstein's direction and supervision. As Principal Officer of the Local, Mr. Stauffer was aware of Ms Goldstein's efforts to purge ineligible members from the list and was informed of the procedures she was utilizing to review the members' dues history Moreover, during both of the count dates Mr. Stauffer spent a great deal of time reviewing the membership list to see if certain people had voted ~~Moreover, the mail ballots on both count days were processed in such a way that Mr. Stauffer could hear the Election Officer Staff call out the voter's names as the Roster was checked, thus he had the opportunity to write down the name of every member who voted.~~ Although Mr Stauffer was present during most of the time that the mail ballots were being processed, he did not challenge the eligibility of any member to vote

The Election Day Count Roster was prepared and submitted to the Election Officer representative pursuant to Judge Edelstein's decision of July 10, 1990 and Article XII of the *Rules* In accordance with Judge Edelstein's decision, the Election Officer possesses full responsibility for maintaining the accuracy and security of the Election Day Count Roster The requirements of the *Rules* and the mandates of Judge Edelstein's July 10, 1990 decision provide that the list of eligible members who voted is with the exclusive jurisdiction of the Election Officer Under the *Rules*, observers and candidates have the right to observe the processing of mail ballots and to make their own list of all individuals who have voted Article IX, § 7 of the *Rules* also provides

observers shall be permitted to observe the conduct of the election Observers may challenge the eligibility of any voter to vote Observers shall be permitted to enter all polling and/or vote counting locations The right to observe includes the right to . . . observe the check made against the membership list of the eligibility of members desiring to vote, the handling of members whose eligibility to vote is challenged Article IX § 7, p 64 of the *Rules*

Mr Stauffer does not allege any interference with his right to observe the processing of the mail ballots

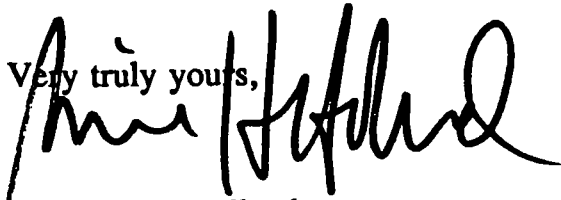
The investigation also did not reveal any evidence which would support Mr Stauffer's allegation that ineligible members were permitted to vote Mr Stauffer has

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refused to provide any evidence to support his allegation Accordingly, the protest is DENIED³

Since the evidence did not disclose that any provisions of the *Rules* had been violated, the protests alleged by Mr Stauffer could not have "affected the outcome of the election" within the meaning of Article XI, § 3 (b) of the *Rules*. Accordingly, the protest is DENIED in its entirety

If any interested party is not satisfied with this determination, they may request a hearing before the Independent Administrator within twenty-four (24) hours of their receipt of this letter The parties are reminded that, absent extraordinary circumstances, no party may rely upon evidence that was not presented to the Office of the Election Officer in any such appeal Requests for a hearing shall be made in writing, and shall be served on Independent Administrator Frederick B Lacey at LeBoeuf, Lamb, Leiby & MacRae, One Gateway Center, Newark, New Jersey 07102-5311, Facsimile (201) 622-6693 Copies of the request for hearing must be served on the parties listed above, as well as upon the Election Officer, IBT, 25 Louisiana Avenue, N W., Washington, D C 20001, Facsimile (202) 624-8792 A copy of the protest must accompany the request for a hearing

Very truly yours,

Michael H Holland

MHH/mca

cc Frederick B Lacey, Independent Administrator
Joyce Goldstein, Regional Coordinator

³ In his protest, Mr Stauffer also states that unless the Election Officer conducts a new election by the method of in-person voting, the Local will refuse to send the elected delegate to the Convention Mr Stauffer's position with respect to this matter contravenes the requirements of the Consent Order as well as Article II, § 10 of the *Rules* The United States District Court for the Southern District of New York held that the *Rules* "shall be enforceable upon pain of contempt " Refusal to obey the Consent Order is also punishable by contempt Mr Stauffer and all other interested parties, including Local 510 are hereby put on notice that appropriate sanctions will be sought for failure of the Local to send and pay the expenses of its certified delegate to attend the 1991 IBT International Convention

IN RE

91 - Elec App - 133 (SA)

JOSEPH T STAUFFER

and

WALTER FRANK SNYDER

DECISION OF THE
INDEPENDENT
ADMINISTRATOR

This matter arises out of an appeal from an April 16, 1991, Decision of the Election Officer in Post35-LU510-CLE. A hearing was held before me by way of telephone conference on April 22, 1991, at which the following persons were heard: George Vasko, an attorney on behalf of Local 510, Richard Billiter, the Local's Recording Secretary, Jerry Bauman, a Trustee of the Local, Bobby Johns, President of the Local, John J Sullivan and Barbara Hillman, on behalf of the Election Officer, Joyce Goldstein, the Regional Coordinator, and Mike Malone, an Adjunct Regional Coordinator.

BACKGROUND

Local 510's election for a single delegate to the IBT Convention was held by mail ballot in January-February 1991. The ballots were to be received by the post office no later than noon on February 8, 1991. On that day, the Election Officer's Adjunct

Regional Coordinator, Mr. Malone, retrieved 198 ballots from the post office and was assured by postal authorities that all ballots received by noon on that day were included in the 198 ballots given to Mr. Malone. These 198 ballots were counted on February 8th. After 16 void and challenged ballots were set aside, the tally was 100 votes for Mr. Stauffer, and 82 votes for his opponent, Walter Snyder.

A few days later, however, the post office transmitted to the Regional Coordinator, Ms. Goldstein, another 118 ballots that had not been included in the ballots given to Mr. Malone. Of these, 117 were postmarked February 7th or earlier, and should have been retrieved with the other ballots that had been duly received by the deadline of noon on February 8th. The oversight, however, was wholly attributable to the post office. Ms. Goldstein reached an agreement with Mr. Stauffer and Mr. Snyder that the second group of ballots would be counted at noon on February 26, 1991. On February 19th, Ms. Goldstein sent a letter to both candidates memorializing the agreement. That agreement was signed by both Mr. Stauffer and Mr. Snyder.

On February 26th, the second vote count was conducted as agreed. Of the 118 ballots belatedly discovered by the post office, eight were not counted because they were void (like the one ballot post-marked after February 8th) or challenged. Of the 100 valid ballots, 64 were cast for Mr. Snyder and 46 for Mr. Stauffer. Thus, the total ballots cast for Mr. Snyder were 146 and the total ballots cast for Mr. Stauffer were also 146. There was a tie.

In accordance with the Rules for the IBT International Union Delegate and Officer Election (the "Election Rules") Article XII, Section 5.d., all challenges to ballots were thus resolved in an attempt to resolve the tie. Because all the challenges were sustained, the final vote remained a tie.

In accordance with the Election Rules, Article XII, Section 5.g., Ms. Goldstein determined to resolve the tie vote by a coin toss and she so advised the candidates. Mr. Stauffer refused to participate in the coin toss and, in fact, became angry and left the room when he was advised that the tie would be resolved by a coin toss. A few of his supporters, however, remained to observe the coin toss. Ms. Goldstein and Mr. Malone were also present for the coin toss, as was Mr. Snyder.

When Ms. Goldstein first tossed the coin, Mr. Malone announced that the coin was not "flipping" during the toss. Mr. Malone states that another voice also called out that the coin was not flipping, although this voice was not identified. While the coin was in the air, Ms. Goldstein announced that the toss would be disregarded. Ms. Goldstein picked up the coin, without looking at whether it was heads or tails, and re-tossed the coin. This time the coin flipped in the air and landed in Mr. Snyder's favor. As a result, Mr. Snyder was declared the winner of the election.

DISCUSSION

Mr. Stauffer takes a number of exceptions to the conduct of the election.

Observer Rights

First, Mr. Stauffer argues that he was not given an opportunity to observe the ballot counting process. In addition, he complains that his supporters were not given an opportunity to observe. In fact, Mr. Stauffer complains that no one observed the process.

This contention is belied by the facts. It is clear that Mr. Stauffer entered and exited the counting room, which was located in the Local Union Hall, during both the first and second count. During his visits into the counting room, Mr. Stauffer observed the process and took note of which members' names had been checked off as having returned the ballots. As discussed in greater detail hereinafter, during one of his visits into the counting room, Mr. Stauffer made a specific inquiry whether the name of the Recording Secretary, Richard Billiter, had been checked-off as having returned a ballot. Mr. Stauffer specifically brought Mr. Billiter to Ms. Goldstein's attention because Mr. Billiter had told Mr. Stauffer that he had voted, presumably in Mr. Stauffer's favor.

Mr. Stauffer's contention that he was not apprised of his observer rights also carries no weight. The Election Rules are clear in the rights they accord members and candidates to observe the ballot counting procedure. See Election Rules, Article IX (Observers). The Election Officer makes available copies of Election Rules to all parties. As a candidate, it was Mr. Stauffer's obligation to familiarize himself with the Election Rules. At the hearing, it was clear that the Local Union's

attorney had in his possession a copy of the Election Rules and was indeed familiar with them.

Mr. Stauffer also complained that the Election Officer had not "designated" any observers. The Election Officer is not obligated to "designate" observers. As noted, the right to observe is open to all members and candidates.

The Coin Toss

Mr. Stauffer next takes exception with the manner in which the tie vote was broken. He does not argue with the fact that Ms. Goldstein was authorized to break the tie by way of a coin toss, rather he takes exception to the manner in which the coin was tossed. Specifically, Mr. Stauffer charges that Ms. Goldstein should have been bound by the first toss of the coin. It is suggested, through the testimony of Mr. Billiter and Mr. Johns (both of whom were in the room during the coin toss), that no one challenged the first toss. As already noted, the Adjunct Regional Coordinator, Mr. Malone, stated that when the coin was first tossed he shouted out that the coin was not tumbling in the air. While the coin was still in the air, Ms. Goldstein indicated that a second toss of the coin would follow. I credit the testimony of Mr. Malone and Ms. Goldstein. I found both Mr. Johns and Mr. Billiter to be evasive witnesses. Neither answered my direct questions in a direct manner.

In an obvious effort to avoid the appearance that she was trying to secure a certain outcome, Ms. Goldstein elected to toss

the coin a second time, guaranteeing that it would turn over in the air several times. There is no suggestion that Ms. Goldstein attempted to achieve a particular result other than simply to resolve the tie.

There is also absolutely no suggestion that anyone in the room, including Ms. Goldstein, knew the outcome of the first coin toss. In fact, Ms. Goldstein testified that when she picked up the coin from the floor after the first toss she did not look to see whether it was "heads" or "tails." Mr. Vasko, on behalf of the Local, said that it would be "impossible" for Ms. Goldstein not to have noticed the outcome. I disagree. It is easy to imagine how Ms. Goldstein could pick up a coin without noticing whether it is heads or tails. A simple turn of the head could achieve such a result.

Casting Of Ineligible Ballots

Mr. Stauffer next contends that ineligible ballots were cast. Specifically, Mr. Stauffer alleges that a member who was discharged from his place of employment pending arbitration did, in fact, vote although his dues had not been paid since December, 1990. Mr. Stauffer suggests that the Election Officer should turn over his Election Day Roster¹ so that the names and eligibility of those who voted can be checked. To grant Mr. Stauffer this relief would be to frustrate and unduly delay the election process.

¹ The Election Day Roster refers to the list maintained by the Election Officer of all those members who submitted ballots.

The Election Rules provide two opportunities to challenge voter eligibility. Voter eligibility requests have, in the past, been resolved by the Election Officer on a pre-election basis. In fact, in this case, the Election Officer with the assistance of Ms. Goldstein, took painstaking efforts to resolve questions of voter eligibility pre-election. In order to determine member eligibility prior to the election, the Regional Coordinator reviewed several months of dues payment periods by Local 510 members. Because the Local's data are not entered into the IBT's computerized TITAN system, it was necessary for Ms. Goldstein to work with the officials of Local 510 to manually generate a roster of eligible voters for use in counting the ballots. Jointly, they attempted to purge any ineligible voter members from the roster before the election. As the Local's principal officer, Mr. Stauffer was aware of the Regional Coordinator's efforts in this regard.

Moreover, during the vote counting, observers can challenge individual ballots. These challenged ballots are then set aside and the challenges are not resolved unless needed to resolve the outcome of the election. See Election Rules, Article XII, Section 5.d.

Once the count is completed, however, the Election Officer does not make the Election Day Roster available. To do so would only unduly delay the election process. Candidates would be invited to sit back and await the outcome of the election. If they lost, then they could open the entire election process to eligibility challenges. Moreover, if a counted ballot is