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March 21, 1991

**VIA UPS OVERNIGHT**

J Varney Richmond  
310 Deed Avenue  
Dayton, Ohio 45404

Keith Jones  
c/o The Your Voice for  
Change Slate  
4869 Delba Drive  
Dayton, Ohio 45439

Charles R Sasser, Sr  
c/o The Teamsters for all  
Teamsters Slate

President  
IBT Local Union 957  
2719 Armstrong Lane  
Dayton, Ohio 45414

Tom Narramore  
4535 Lloyd Avenue  
Dayton, Ohio 45424

**Re: Election Office Case No. Post-48-LU957-CLE**

Gentlemen.

A post-election protest was filed under Article XI, Section 1 of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by J. Varney Richmond, a candidate for delegate from Local Union 957. Mr Richmond contends that during the election count, which took place on March 2, 1991, Local 957 members in good standing, and thus eligible to vote, were declared ineligible and their ballots not counted. Mr. Richmond requests that these challenged ballots be counted and also requests a recount of the ballots counted due to the narrow margin between himself and the sixth ranking candidate

The Local 957 delegate election was conducted by mail ballot. Six delegates and three alternate delegates are to be elected from the Local. The ballots were counted on March 2, 1991 and the tally for delegate candidates was as follows:

**DELEGATE CANDIDATES**

**VOTE**

(Six Elected)

1	Thomas Nightwine	730
2	Dennis Weinert	679

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3	Chuck Sasser, Sr.	671
4.	John W Buzard, Jr.	647
5.	Ray Stansberry	613
6.	Keith Jones	591

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7	Varney Richmond	582
8	Alfredo Falletta	529
9	James Bell	519
10	Henry A Beatty	504
11	Edward J Ross	474
12	Bob Kastl	409
13	Tom Narramore	92

ALTERNATE DELEGATE CANDIDATES

(Three Elected)

1.	John Donahey	622
2	Larry Shelton	612
3	Fred Romine	600

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4	Bill Larkin	466
5	Bruce O'Donnll	463
6	Jim Slyder	411
7.	Darrel Stewart	100
8	John Shady	55

9.	Jim Shoop	49
10	Bob Stevens	43
11	Tom Davis	42

As indicated by the tally, only nine votes separated the sixth and seventh ranked delegate candidates. The returned ballot challenges which are the subject of this protest, the only post-election protest filed by any members from this Local, concern twenty-six ballots. Therefore, these ballots, if counted, may affect the outcome of the election.<sup>1</sup> The Election Officer has conducted an investigation of the protest for that reason. *Rules, Article XI, § 1 (b)(2)*

The first basis for the post-election protest of Mr Richmond is that eighteen members whose ballots were challenged and the challenges sustained, were in fact eligible to vote. Mr Richmond contends that information concerning the eligibility of these members was not available at the time of the count. Therefore, the ballots were not counted.

The TITAN records available at the time of the count reflected that these members, all of whom paid dues through checkoff, had not paid their February, 1991 dues. The records of other members, employed by the same employer as the members, demonstrated the employers had deducted and remitted February dues. Thus, the available records indicated, since no dues had been deducted and remitted for only these eighteen among all members employed by their employers, that these eighteen must not have worked or had earnings in February, 1991. Thus, the Regional Coordinator sustained the challenges.

The Election Officer subsequently engaged in a detailed investigation of the eligibility of the members listed. The investigation revealed that all of these members but one, Eugene Smith, were in fact employed in February of 1991 and had earnings from which their dues could have been checked off. Eugene Smith had no such earnings. Thus, all members but Mr Smith were in good standing, as of the date of the election, and eligible to vote. Accordingly, it is the determination of the Election Officer that the following members' ballots should be counted: Lawrence Schneider, James Parker, Pamela Strain, James Kitchen, Melissa Bush, George McLin, Greg Coy, John Baker, Jim Dail, Joseph Collins, Glen McCullough, Larry Campbell, David Morrow, Joe Douglas, David Stacey, Chriss Mann, and Howard Gorsuch.

The second basis for the protest concerned the challenge to the ballots of members Bruce Savage, Thomas Paul, Albin Crisp, James Morrow, William Ogden and Ronald

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<sup>1</sup>There is no effect on the alternate delegate election since 134 votes separate the winning alternate with the lowest votes from the losing alternate with the highest votes.

Brethick. Each of these members had dues paid through February of 1991, but had taken a withdrawal card prior to the March 2, 1991 election date. Complainant alleges that the notice for nominations and elections misled the voting membership, in that the notice stated "To be eligible to vote, a member must have paid dues through February, 1991." The complainant states that there was no explanation in the notice as to the effect a member requesting and obtaining a withdrawal card would have on voting eligibility.

It is clear from the notice for nominations and elections that to be eligible to vote one must be a member in good standing with the Local. By taking a withdrawal card, a member, as the term implies, withdraws from membership, and is no longer a member of the Local. It is only when the withdrawal card is deposited that one regains membership.

Voter eligibility for mail ballot elections is determined as of the date when the mail ballots are counted, not as of the date the vote was cast or mailed. This is clear from the notice of nominations and elections. The last date for paying dues arrearages to be a member in good standing and eligible to vote is the day prior to the date the votes are counted. Regardless of dues payments, if a member withdraws from the Union, he is no longer a member in good standing of the Local and thus, is not eligible to vote. Therefore, it is the determination of the Election Officer that the ballots of the individuals named above, whose ballots were challenged and the challenges sustained, were properly not counted as the voters were not members of the Local Union and therefore not eligible to vote.

The third basis of the protest concerns two members, Derrick Shoemaker and James Weems, who had their ballots challenged and the challenges sustained due to their failure to fully pay initiation fees prior to the election date. Membership in the Local requires payment of a \$125.00 initiation fee. Mr. Shoemaker paid \$65.00 as of March 1, 1991; the payments were made in two installments, one in January and the other in February. As of March 14, 1991, twelve days after the election and after further installment payments, Mr. Shoemaker's initiation fees still remained not fully paid; an eleven dollar balance remained. As of March, 1991, Mr. Weems had paid in two installments, only \$75.00 of his \$125.00 initiation fee. Mr. Weems made a third installment payment on March 18, 1991, sixteen days after the election, but a \$27.00 balance is still owing on his initiation fee.

Payment of the full initiation fee is a prerequisite to membership in good standing in the Local Union. Thus, neither Mr. Shoemaker nor Mr. Weems were members of the Local Union, not having paid the full initiation fee due. They were not eligible to vote. The Election Officer determines that the previous decision to sustain the challenges to their ballots is affirmed.

In the election conducted for delegates from Local 957, the margin between the delegate candidate ranked sixth and the delegate candidate ranked seventh is nine votes. Thus, the Election Officer's decision with respect to the seventeen members whose vote

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the Election Officer has determined should be counted may affect the outcome of this election. Thus, the Election Officer orders that the seventeen ballots previously not counted be counted.

Due to the small margin between these candidates and given that the only eligibility issues have been determined by the Election Officer in this decision, the Election Officer will further grant the request for a recount of the ballots previously counted for this Local. Said recount shall include the ballots of the following seventeen members: Lawrence Schneider, James Parker, Pamela Strain, James Kitchen, Melissa Bush, George McLin, Greg Coy, John Baker, Jim Dail, Joseph Collins, Glen McCullough, Larry Campbell, David Morrow, Joe Douglas, David Stacey, Chriss Mann, and Howard Gorsuch.

Accordingly, the protest is GRANTED to the extent set forth above and DENIED in all other respects. The recount shall take place under the direction of the Regional Coordinator Joyce Goldstein who will advise the Local and all candidates, or their slate representatives, of the date, time and place of the recount.

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