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October 29, 1991

VIA FACSIMILE (WHERE INDICATED) AND UPS OVERNIGHT

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Bill Kamalski, Business Agent
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Re: Election Office Case No. P-1004-LU63-CLA
P-1017-LU63-CLA

Gentlemen:

Protests were filed pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Daniel Torres, Jr., a member of IBT Local Union 63. In his protests, Mr. Torres contends that

Daniel Torres, Jr.
October 29, 1991
Page 2

Consolidated Freightways, an employer of IBT members, permitted International Union officer candidates R. V. Durham, Harold Leu, Michael Riley and Chuck Mack, along with certain of their supporters, access to the interior of its facility located in Mira Loma, California for campaign purposes. Mr. Torres states that Consolidated refused to permit him or any International Union officer candidates on the slate he supports, the Shea-Ligurotis Action Team, similar access. Mr. Torres also contends that while campaigning, candidates Riley and Mack, in conjunction with Local Union 63 Trustee Everett Roberts and business agent Bill Kamalski, utilized Union vehicles and campaigned on Union work time. Finally, Mr. Torres complains that while in the lunchroom at the Consolidated terminal, Mr. Riley posted Durham campaign material over Shea campaign material.

Mr. Torres is a member of Local Union 63, the Local which represents employees at the Mira Loma facility of Consolidated Freightways. However, he is not an employee of Consolidated Freightways. The protest was investigated by Adjunct Regional Coordinator Michael Franklin.

The investigation of this protest revealed that on October 16, 1991, International Union officer candidates Michael Riley and Chuck Mack along with Everett Roberts campaigned in the interior of the Consolidated Freight facility located in Mira Loma. They arrived at Consolidated at approximately 4:00 p.m. and stayed until approximately 5:30 p.m. During a portion of that time, Mr. Riley admits that he engaged in campaign activities in the lunch room area of the facility. The remainder of the time was spent on a discussion of Union business - discussion of the Western Conference of Teamsters Pension Fund. One of the reasons for his visit to the facility was to deal with the pension issue.

Mr. Mack accompanied Mr. Riley to the Consolidated Freightways facility at Mira Loma, and while there campaigned on one of the docks, in the drivers room and in one of the lunch rooms. Both Mr. Mack and Mr. Riley distributed campaign literature while inside the facility. There is no evidence that either Mr. Durham or Mr. Leu were at or in the Consolidated terminal on October 16, 1991.

While in the facility, Mr. Riley posted campaign literature on the bulletin board in the lunch room. When so doing - while attempting to find space for his literature - he initially posted his literature over Shea campaign literature already posted on the bulletin board. Within for three to four minutes, he rearranged the board so that his literature no longer obscured the Shea literature.

Both Mr. Mack and Mr. Riley used vacation time during the afternoon of October 16, 1991. Everett Roberts, Trustee of Local 63, accompanied Mr. Riley and Mr. Mack at Consolidated. He was also on vacation this day. Mr. Riley and Mr. Roberts used

Daniel Torres, Jr.
October 29, 1991
Page 3

Union-owned vehicles on that date. Mr. Mack was driving a rental car.

Andy Soto, a business agent for Local Union 63, stated that he contacted the Labor Relations Director of Consolidated Freightways at Mira Loma, Bill McArthur on October 15, 1991 and requested permission for Michael Riley to come into the terminal facility to discuss pension plan matters with the driver members on October 16, 1991. Mr. McArthur approved that request. Bill Kamalski, another business agent for Local Union 63, was also present at the Consolidated Freightways facility in Mira Loma on October 16, 1991 a approximately 4:00 p.m. Mr. Kamalski, however, remained at the facility for only 45 minutes for Union business and did not engage in any campaign activities.

During the period that Mr. Mack was campaigning in the lunch room, Mr. McArthur, the Labor Relations Director for Consolidated, entered the lunch room. He heard Mr. Riley engage in a heated discussion with a group of members. Mr. McArthur characterized the discussion as one concerning campaign issues, including the Local Union 63 trusteeship. Mr. McArthur stated that he then asked Mr. Riley to leave the facility, which Mr. Riley did.

The investigation reveals that Daniel Torres, Jr., as a supporter of the Shea-Ligurotis Action Team, sought access to the lunch room of the Consolidated Freightways facility at Mira Loma, California for campaigning by members of the Shea-Ligurotis Action Team slate and/or their supporters. By letter dated October 20, 1991, Mr. Torres was advised by Mr. McArthur that any campaign activities conducted on the property of Consolidated Freightways Mira Loma facility by IBT members not employed by Consolidated could only occur in the facility's parking lot.

Article VIII, § 10(d) of the *Rules* provides that no restrictions shall be placed upon International Union candidates' rights to solicit support, distribute leaflets and the like on employer premises. As noted in the Advisory Regarding Political Rights, issued December 28, 1990, pre-existing rights are those established under substantive law or rights established by reason of the prior practices of the employer. In this case, the employer permitted two candidates for International office, both associated with R. V. Durham Unity Team and certain of their supporters access to the interior its facilities for campaign purposes. Whether Consolidated was aware initially that campaign activity would be conducted in the lunch room and other areas of its terminal, it is clear that campaign activities were conducted for at least one hour inside the physical plant of the Mira Loma terminal. Under and in accordance with the *Rules*, the employer must now permit similar access to other candidates for International office in the IBT not associated with the R. V. Durham Unity Team slate.

In accordance with the foregoing, the Election Officer orders that Consolidated

Daniel Torres, Jr.
October 29, 1991
Page 4

Freightways permit all candidates for International Union office in the 1991 International Union officer election and their supporters access to its Mira Loma facility for campaign purposes. No candidate need be permitted access on more than one occasion or for more than one hour. All candidates may be accompanied during the period of their campaign visit by others. However, in no case may the number of persons entitled to access--including the candidates--exceed four. All such candidates or their representatives shall give reasonable notice to Consolidated Freightways by contacting Bill McArthur, Labor Relations Director, 11888 Mission Blvd., Mira Loma, California 91752, of the time and date of their visit.

Under normal circumstances, reasonable prior notice shall mean notice of at least 48 hours in advance of the visit. At this location, however, Mr. Shea's supporters have previously but unsuccessfully sought campaign access. Further, the Election Officer has been informed by the protester here that Shea-Ligurotis Action Team candidates and their supporters are scheduled to be at Consolidated Freightways Mira Loma facility from 9:00 a.m. to 10:30 a.m. on Wednesday, October 30, 1991 and/or from 12:01 a.m. to 2:00 a.m. on Thursday, October 31, 1991. Given that this Southern California campaign trip has already been scheduled, the Election Officer determines that with respect only to the Shea-Ligurotis Action Team candidates' planned visits on October 30, 1991 or October 31, 1991, two hours advance notice shall be considered sufficient. The Shea-Ligurotis Action Team shall be granted access to the interior of the facility, i.e. lunch room, during one but not both of these visits. As acknowledged and agreed by Consolidated Freightways, campaigning for the remainder of the candidates' time at the facility may occur in the parking lot of the terminal as previously arranged. Further, for these reasons, an appeal will not stay the Election Officer's remedy for the violation found here. *Rules*, Article XI, § 2(z).

With regard to the remaining allegations of the protest, the Election Officer determines that the evidence does not support a finding that the *Rules* have been violated. Mr. Riley, Mr. Mack and Mr. Robert had all arranged to take vacation time on October 16, 1991. Article VIII, § 10(b) of the *Rules* provides that campaigning by Union officers and employees during paid vacation is not violative of the *Rules*. With regard to Mr. Kamalski, business agent for Local Union 63, the Election Officer credits his statement that on the date in question he did not engage in campaigning while at the Mira Loma facility of Consolidated Freightways, but was in fact present at that facility for the purpose of conducting Union business.

Similarly, the use of a Union-owned vehicle by Mr. Riley and Mr. Roberts to travel to the Consolidated Freightways facility at Mira Loma is not violative of the *Rules*. Both Mr. Riley and Mr. Roberts are permitted to use their Union-owned vehicles for personal business. In a previous Election Office matter, In Re Gregory/Spurgeon and IBT Local Union No. 135, affirmed 91-Elec. App.-135 (SA), the Independent

Daniel Torres, Jr.
October 29, 1991
Page 5

Administrator considered a similar complaint involving the use of a Union-owned car for campaigning purposes. The Independent Administrator affirmed the Election Officer's ruling that use of the car under circumstances such as exist here was not an improper campaign contribution by a Union in violation of the *Rules*: "... Given that the Local Union cars are used by the business agents for personal reasons, it is not a violation of the *Election Rules* for a business agent to use his car to travel to a worksite to campaign." *Id.* at page 4.

With regard to Mr. Mack, the investigation of this protest disclosed that Mr. Mack rented a vehicle which he paid for from his campaign funds. There is no evidence that Mr. Mack used a Union-owned vehicle in connection with his October 16, 1991 campaigning. There is no evidence that the car he did use was rented with Union funds.

Finally, the Election Officer does not find that the obscuring of the Shea-Ligurotis Action campaign material by Mr. Riley for a three to four minute period was violative of the *Rules*. Although the Election Officer has determined that obscuring or removing another candidate's literature violates of the *Rules*, the investigation of this protest revealed that the Shea-Ligurotis campaign material was obscured for a very limited period Mr. Riley's purpose when obscuring the material was to rearrange the board to find space so that all campaign material could be displayed. He did so and the Shea material - after but a very limited period - was again fully visible by all IBT members.

Accordingly, the protest is **GRANTED** to the extent set forth above with respect to access and **DENIED** in all other respects.

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,

Daniel Torres, Jr.
October 29, 1991
Page 6



Michael H. Holland

MHH/mjv

cc: Frederick B. Lacey, Independent Administrator

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