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Michael H. Holland
Election Officer

October 31, 1991

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VIA UPS OVERNIGHT

Joseph A. Thompson
3244 Rain Shower Lane
Kissimmee, FL 34744

Larry D. Parker, President
Gary Thornton, Secretary-Treasurer
IBT Local Union 385
122 North Kirkman Rd.
Orlando, FL 32811-1498

Consolidated Freightways
828 Taft Vineland Road
Orlando, FL 32824

Re: Election Office Case No. P-1007-LU385-SEC

Gentlemen:

A protest was filed pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Joseph Thompson, a member of Local 385. Mr. Thompson contends that on October 21, 1991, Larry Parker, President of Local 385, and Gary Thornton, Secretary-Treasurer of Local 385, were campaigning at the Consolidated Freightway terminal, located on Taft Vineland Road in Orlando, Florida, on Union-paid work time in violation of the Article VIII, § 10(b) of the *Rules*.

This protest was investigated by Regional Coordinator Don Williams. None of the facts relevant to this protest are disputed. Both Larry Parker and Gary Thornton were present on October 21, 1991 at the Consolidated Freightways terminal in Orlando, Florida for the purpose of campaigning for the R. V. Durham Unity Team. They arrived at approximately 3:30 p.m. and remained until sometime after 5:00 p.m.

The business hours for Local 385 are from 8:00 a.m. to 5:30 p.m.. Both Mr. Parker and Mr. Thornton had worked at the Union office earlier on October 21, 1991. They left the Union office at approximately 3:00 p.m. to travel to the Consolidated facility, where they campaigned with and on behalf of R. V. Durham and other members of his slate. Neither Mr. Parker nor Mr. Thornton used vacation or other earned benefit time during the period they were campaigning. They both received their regular Union salaries for the week of October 21, 1991.

The Election Officer investigation determined that Mr. Parker engaged in campaign activities with and on behalf of Mr. Durham and other members of his slate

at sites other than the Consolidated facility during the week of October 21, 1991. Again Mr. Parker did not utilize vacation or other earned benefit time for those periods of campaigning. His salary for the week of October 21, 1991 was not reduced to reflect the amount of time he spent campaigning at Consolidated.

Mr. Thornton and Mr. Parker state that the Local has a practice of allowing its officers and employees to take partial days off for personal business without using accrued vacation or other earned benefit time and without suffering a loss of pay for the unworked hours. Such practice by the Local is not set forth in a written policy. The parameters of the policy or the reasons for which paid personal business leave is granted are nowhere defined. Apparently, the granting or denial of such leave is at the discretion of the Local's principal officer, Mr. Parker. No Union officer or employee has any apparent right to personal business leaves by virtue of employment nor is the number of days or hours of personal leave allowed defined or related to the nature or length of employment. The Local does not maintain records of the amount of time taken. The Election Officer understands that this practice of granting personal time is intended to cover situations where an officer or employee needs to be absent from his duties for less than half a day.

Article VIII, § 10(b) of the *Rules* provides that officers and employees of the Union may not campaign on time that is paid for by the Union unless that time constitutes paid vacation, paid lunch hours or breaks, or similar paid time off. In numerous decisions the Election Officer has found this provision not to have been violated when officers and employees of the Union have, in fact, utilized paid vacation time or campaigned during their lunch hour or before or after regular business hours.

In each of those situations, however, the officer or employee was utilizing non-working, albeit paid time, to which he/she is entitled by virtue of the terms of his/her employment. The paid time is a discrete and limited amount; no discretion need be exercised in determining the officer's or employee's right to such paid time off. With respect to paid time off such as vacation, to the extent that the employee utilizes the time to engage in campaign activities, the time will be unavailable for other personal use.

Local 385's purported policy is totally different. At the discretion of Mr. Parker, its officers and employees may be granted unlimited time to campaign while being paid. This is inconsistent with the underlying premises of the March 14, 1989 Consent Order and the reason for the limitations included in Article VIII, § 10(b) of the *Rules*. To permit Local 385's practice to govern would only invite abuse of the *Rules* and be antithetical to the *Rules'* prohibition of Union support for any particular candidate or slate of candidates for International office.

Accordingly, the protest is GRANTED. Mr. Parker and Mr. Thornton are directed to cease and desist from using Union-paid personal leave for campaigning.

Joseph A. Thompson
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Local 385 is directed to cease and desist from granting its officers and employees Union-paid personal leave for campaign purposes. Within seven days of the date of this letter, Mr. Parker and Mr. Thornton are to reimburse the Local for a sum equal to two and one-half (2½) hours of their wages for the week of October 21, 1991. Within this same period, Mr. Parker is directed to prepare an accounting of all time spent campaigning during regular Union business hours during the week of October 21, 1991 and to reimburse the Local in a sum equal to the amount of wages paid to him by the Local for the period he was campaigning. Within this same seven-day period, Mr. Parker and Mr. Thornton shall each submit to the Election Officer an affidavit setting forth their compliance with this decision, including documentation of the amount of the reimbursement to the Local and the method used to arrive at this amount. Mr. Parker's accounting as described above shall be included with his affidavit.

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/ca

cc: Frederick B. Lacey, Independent Administrator

Donald H. Williams, Regional Coordinator

Arthur Hackworth, General Counsel
Consolidated Freightways, Inc.
3240 Hillview Avenue
Palo Alto, CA 94304

IN RE:	:	91 - Elec. App. - 223 (SA)
JOSEPH A. THOMAS	:	
LARRY D. PARKER	:	
GARY THORNTON	:	
and	:	DECISION OF THE
IBT LOCAL Union NO. 385	:	INDEPENDENT ADMINISTRATOR

This matter arises as an appeal from the Election Officer's decision in Case No. P-1007-LU385-SEC. A hearing was held before me by way of teleconference at which the following persons were heard: Barbara Hillman for the Election Officer; Donald Williams, a Regional Coordinator; Joseph A. Thompson, the Complainant; Larry D. Parker, President of IBT Local 385; and Gary Thornton, Secretary-Treasurer of IBT Local 385. The Election Officer also provided a written Summary in accordance with Article XI, Section 1.a.(7) of the Rules for The IBT International Union Delegate and Officer Election (the "Election Rules").

The issue on this appeal is whether or not Larry Parker and Gary Thornton, salaried officers of IBT Local 385, may use their work time for campaigning in the same manner that they have previously used their work time for personal business.

The facts of this case are not in dispute. Messrs. Parker and Thornton are full time, salaried officers of Local Union 385. At 3:00 p.m. on October 21, 1991, Mr. Parker, the Local's President,

and Mr. Thornton, the Secretary-Treasurer, went to the Consolidated Freightways facility in Orlando, Florida to campaign for the R.V. Durham Unity Team of International officer candidates. It is clear that they campaigned from about 3:30 p.m. until sometime after 5:00 p.m., that these were the Local's normal business hours, and that they were on paid Union time while campaigning. Neither officer used vacation time, leave time, compensatory time, or any other kind of accrued time off to campaign. In addition, Mr. Parker used his work time to campaign at other sites for Mr. Durham during the same week. Again, he did not charge that time to any kind of paid leave.

Based on these facts, the Election Officer determined that these two Union officers had violated Article VIII, Section 10.b. of the Election Rules which prohibits Union officers and employees from campaigning on paid Union time. The use of time that is paid for by the Union for campaign purposes is also barred under Article X, Section 1.b. which regulates campaign contributions.

Messrs. Parker and Thornton, however, claim that the Local has a long standing policy of allowing officers and employees to take time off from work for personal business without losing pay, or using accrued vacation or other accrued time.

The policy relied upon by Messrs. Parker and Thornton is neither written nor precisely defined, even in practice. There are no restrictions on the amount of time off employees and officers are entitled to use, nor are there any limits on the frequency with

which officers may attend to personal business on Union time. Mr. Parker, who is bound by no standards or guidelines, has sole authority to approve or deny requests for this kind of leave.

At the hearing before me, Mr. Parker asserted that the Election Officer had led him to believe that this practice did not violate the Election Rules. Specifically, Mr. Parker felt that he had not received clear guidance on this issue from the Election Officer at a hearing in March of 1990 which solicited comments on proposed versions of the Election Rules. Mr. Parker also stated that the Regional Coordinator, Donald Williams, had asked him about his use of Union time to campaign in connection with an earlier, unrelated protest and that although he had informed Mr. Williams about this practice, no action had been taken. Thus, while Mr. Parker does not insist that he be able to continue this practice in the future, he argues that it would be unfair to hold him accountable for having previously used time in accordance with his usual practice, especially in view of the alleged confusion that he claims the Election Officer generated on the issue.

It is clear that the practice engaged in by Messrs. Parker and Thornton is fraught with the potential for abuse and, therefore, it cannot continue. As stated by the Election Officer in his Summary:

It is not sufficient for Messrs. Parker and Thornton to claim that the Union routinely allows Union officers and employees to take time during the day to attend to personal business. For the Local to subsidize its employees use of work time to visit the dentist, pick the car up from the shop, or retrieve a sick child from school is purely a

matter of internal administration and management that does not implicate the Election Rules. However, for a Local to exercise unfettered discretion to grant unlimited time off, which is not even accounted for after the fact, to officers and employees to engage in partisan campaign activity, is in effect to allow a Local to subsidize such activity and thus to implicate the rules that prohibit Local Unions from contributing their resources to any campaign. In addition, a practice by which a Local's principal officer can in effect promote or discourage campaign activity on the part of particular candidates with no standards to govern the exercise of his discretion or to ensure even handed treatment is so subject to partisanship and abuse that it cannot be countenanced by the rules.

For the reasons expressed by the Election Officer, the practice claimed here cannot be allowed to stand.¹

In determining whether Messrs. Parker and Thornton should be required to account for and pay their Local for the time spent campaigning, I reviewed both the proposed and current versions of the Election Rules as well as correspondence between Mr. Parker and Mr. Williams regarding this issue.

The Election Rules in both their present and prior versions were always clear in prohibiting the use of paid Union time for campaign purposes. The earliest version of the rule at issue simply prohibited all use of any Union time for campaign purposes.

¹ At the hearing before me Mr. Parker asked that I furnish guidance that would cover all the situations where it might be difficult to distinguish personal from Union time. This larger issue, however, is not properly before me in this case. Moreover, as acknowledged by the Election Officer at the hearing, he is willing to entertain specific inquiries on the subject.


Proposed Rules For the IBT International Union Delegate and Officer Election, Article VI, Section 1.B.(4). It was this version of the rule that would have been the subject of commentary at the March 1990 hearings referred to by Mr. Parker. The present version of the rule permits campaigning on incidental time and paid time off such as accrued vacation time. Election Rules, Article VIII, Section 10.c. However, at all times the rule in question clearly prohibited the use of regular paid Union time for campaign purposes.

In addition, by letter dated April 17, 1991, Mr. Parker, responding to a prior request from Mr. Williams, informed Mr. Williams that he had taken "one-half day off" to distribute campaign literature which had become the subject of an Election Rule protest. A reasonable reading of the phrase "one-half day off" is that it refers to vacation time, or compensatory time, or some other accrued time off which is requested and accounted for in the usual manner. It is evident that in stating that he had taken "one-half day off" Mr. Parker conveyed the message that he was on something other than paid Union time. It is equally evident that this phrase does not reasonably describe the practice that is at issue here and thus it is understandable that the Regional Coordinator did not question it.

Given the foregoing, it cannot be said that the Election Officer or the Regional Coordinator misled Mr. Parker on the issue of using paid Union time for campaign purposes.

Messrs. Parker and Thornton engaged in campaign activity during normal business hours while they were on paid Union time. This was a clear violation of the Election Rules. Their belief that the informal practice of using paid Union time for personal business was also an appropriate practice for their campaign activity does not excuse them from compliance with the Election Rules. Thus, it is appropriate to hold them accountable for any misused time as well as to require that they cease and desist from the practice in the future.

For the foregoing reasons, the decision of the Election Officer is affirmed in all respects.



Frederick B. Lacey
Independent Administrator
By: Stuart Alderoty, Designee

Dated: November 12, 1991