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Michael H. Holland  
Election Officer

November 4, 1991

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**VIA UPS OVERNIGHT**

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Shea-Ligurotis Action Team  
c/o Robert Baptiste, Esquire  
Baptiste & Wilder  
1919 Pennsylvania Avenue, N.W.  
Suite 505  
Washington, D.C. 20006

**Re: Election Office Case No. P-1014-LU63-CLA**

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Daniel Torres, Jr. In his protest, Mr. Torres contends that on October 22, 1991, management representatives of Yellow Freight Systems denied him and other supporters of the Shea-Ligurotis Action Team access to employee lunch rooms and non-work areas inside its Barstow, California facility to campaign. He contends that this treatment was discriminatory because prior to the IBT Convention, General President candidate Ron Carey and his supporters were given access to such areas for campaigning purposes. The protest was investigated by Adjunct Regional Coordinator Michael Franklin.

Neither Mr. Torres nor the other members who sought access to the Barstow facility are employed by Yellow Freight. Mr. Carey, and his supporters who Mr. Torres claims were granted access to the Barstow facility, are also not employed by Yellow Freight.

Article VIII, § 10(d) of the *Rules* prohibits restrictions from being placed on any IBT member's right to engage in campaign activities on employer facilities. That section of the *Rules* further provides that such access "shall be made equally available on the same basis to all candidates and members." Pre-existing rights are those provided by the operation of substantive law or rights granted by reason of prior practice. See

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**Advisory Regarding Political Rights**, issued December 28, 1990 ("*Advisory*"). There is no substantive legal right granting IBT members not employed by a particular employer or at a particular facility of an employer access to the interior of such facility for campaigning purposes.

For purposes of the 1991 IBT International Union Election, Yellow Freight has promulgated a special solicitation policy. Pursuant to that policy, Yellow Freight will afford access to nominated International Union officer candidates—but not to other IBT members who are not employed by it—to lunch rooms and similar non-work areas of Yellow Freight's facilities for campaign purposes. The Election Officer has indicated to Yellow Freight that such special solicitation policy, absent past practice at a particular facility granting greater access, is in conformity with the *Rules*. The policy has been disseminated to all nominated candidates for International office.

The Election Officer's investigation determined that on March 4, 1991, Ron Carey, along with other supporters, campaigned in the main lunch room at the Barstow facility during the period of the lunch break. Mr. Carey and his supporters were in the lunch room for approximately 30 minutes. Mr. Carey (or his representative) had made prior arrangements with Yellow Freight to campaign in the lunch room on March 4, 1991. He received permission for him and his supporters to be in the lunch room from Dave Norman, a shift operations manager, who at the time was temporarily acting as the general operations manager for the facility. Accordingly, Yellow Freight was aware of the purpose of Mr. Carey's visit and the fact that he was accompanied during such visit by other IBT members who themselves were not candidates for International office.

As noted above, Yellow Freight's access policy, including its special policy promulgated for the 1991 IBT International Union Officer Election, denies IBT members not employed by it, other than International Union officer candidates, access to the interior of its facilities for campaigning purposes. However, it is a violation of the *Rules* for an employer to permit access to the interior of its facility to IBT members who support one candidate and deny similar access to other IBT members. See e.g., In re Faygo 91 Elec App 188 (SA). Because Yellow Freight permitted Mr. Carey to be accompanied by other IBT members, not themselves International Union officer candidates, during his campaign visit to the Barstow lunch room, the Election Officer would normally require Yellow Freight to afford other General President candidates a similar opportunity. See, e.g., In re Faygo, 91 Elec App 188 (SA).

However, the Election Officer has determined that such remedy is not warranted in this case. The access afforded Mr. Carey is now being afforded to all nominated International Union officer candidates by Yellow Freight. All nominated International Union candidates have been notified of their right to obtain such access. The Election Officer notes that the Shea-Liguoris Action Team, the slate of nominated candidates

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supported by Mr. Torres, were in the Southern California area on October 30 and 31, 1991 for campaign purposes and were permitted--or would have been permitted, if requested--to obtain access to the lunch room and other non-work areas of the Barstow facility.

The only inequality present here is that Mr. Carey was permitted to be accompanied by other IBT members, not themselves candidates for IBT International Union office, while Yellow Freight will not now permit any IBT member not employed by it, other than a nominated candidate to obtain access to non-work areas inside its facilities. However, the campaign visit of Mr. Carey took place on March 4, 1991, nearly eight months prior to the date that Mr. Torres sought access. On this single occasion, Mr. Carey and his supporters were permitted access only to the main lunch room of that facility for a period of no more than one half hour. Further, the access denied Mr. Torres on October 22, 1991 was not equivalent to the access provided Yellow Freight on March 4, 1991; Mr. Torres did not seek to accompany a nominated candidate, but rather, sought access for himself and other IBT members, none of whom were nominated International Union officer candidates.

Under all these circumstances, the Election Officer concludes that Yellow Freight did not violate the *Rules* by denying Mr. Torres and other IBT members, none of whom are either employed by Yellow Freight or nominated International Union officer candidates, access to the interior of its Barstow, California facility for campaign purposes. The 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,

Michael H. Holland

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**MHH/ca**

**cc: Frederick B. Lacey, Independent Administrator**

**Geraldine L. Leshin, Regional Coordinator**

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