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November 15, 1991

VIA UPS OVERNIGHT

Al Dionne
1704 Triangle Ave.
Orlando, FL 32806

Donald Chaney
Alternate Shop Steward
c/o IBT Local Union 385
126 North Kirkman Road
Orlando, FL 32811-1498

Larry D. Parker
President
IBT Local Union 385
126 North Kirkman Road
Orlando, FL 32811-1498

Re: Election Office Case No. P-1084-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"). In his protest, Al Dionne alleges that his rights under the *Rules* were violated by Alternate Steward Donald Chaney when Mr. Chaney discarded campaign literature which was placed in a non-work area by Mr. Donahue. The Election Officer's investigation revealed the following.

Al Dionne is a package car driver employed by United Parcel Service ("UPS") at its East Center facility of the Orlando Hub in Orlando, Florida. Dionne is a member of Local Union 385. Don Chaney is an alternate steward for Local Union 385 and is employed by UPS at the adjacent North Center of the Orlando Hub. On the morning of November 12, 1991, Dionne distributed campaign literature, i.e., copies of Convoy Dispatch, in non-work areas in the East, North, South and Kissimmee centers of the Orlando Hub. Dionne distributed approximately 150 copies of the Convoy Dispatch in non-work areas of the North, South and Kissimmee centers before returning to the East center for the start of his shift. He handed some copies of the newspaper to members employed by UPS. Other copies were inserted in locker doors; no lockers were opened by Dionne. All of the distribution was done on non-work time.

At the time Dionne's work shift was scheduled to begin, he had 50 copies of the Convoy Dispatch which he had not distributed. He placed the approximately 50 copies of the Convoy Dispatch on a bench in the driver's locker room while he changed his clothes. Chaney entered the locker room, said that someone had been improperly

distributing literature by "stuffing it" in employees' lockers, and stated that UPS policy did not permit leaving literature unattended in non-work areas; the only acceptable means of distributing literature according to that policy was to personally hand it to employees. Chaney then saw the pile of Convoy Dispatches on the bench, picked up the literature, removed it from the locker room and disposed of it.¹ Mr. Chaney also removed the campaign literature which had been placed in the edge of employee lockers in the locker rooms of the other centers of the facility. While Chaney contends that he was only policing the locker rooms on behalf of his employer--disposing of improperly distributed literature or trash--there is no evidence that he had ever done so prior to removing and discarding Dionne's campaign literature.

The *Rules* guarantee the right of IBT members to openly support and campaign on behalf of candidates of their own choosing. *Rules*, Article 10(a). Among the campaign rights of IBT members is the right to distribute campaign literature in non-work areas at non-work times. *Rules*, Article 10(d); see also, e.g., Advisory Regarding Political Rights, dated December 28, 1990.

It is not necessary for the Election Officer, in resolving this protest, to decide whether the UPS at this facility has a policy prohibiting the placing of unattended pieces of campaign literature in non-work areas or whether, if such policy exists, it is violative of the *Rules*. The issue here is whether it is violative of the *Rules* for an IBT member to use an employer policy to interfere with the campaign activity of a fellow IBT member.² The Election Officer concludes that it is violative of the *Rules* for a member of the IBT to remove or destroy campaign literature distributed by a fellow IBT member even if such conduct is consistent with an employer's policy. Chaney simply did not have the right to interfere with Mr. Dionne's campaign activity on the basis of a policy that he is not required, as a condition of his employment, to enforce.

For the forgoing reasons, the Election Officer concludes that the *Rules* have been violated.

To remedy this violation of the *Rules*, the Election Officer orders Donald Chaney to cease and desist from any further interference with the campaign activity of any IBT member, including, but not limited to, Al Dionne's distribution of campaign literature

¹ Both Dionne and Chaney concede that Chaney was unaware that Dionne was the literature distributor at the time he entered the locker room and disposed of the literature.

² Mr. Chaney is a UPS employee. He is not a supervisor or a guard and therefore has no responsibility to police the work place or to enforce UPS policy against fellow employees.

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in non work places during non-work time.³ Further, Donald Chaney shall reimburse Al Dionne for the cost of the campaign literature removed by Chaney. Mr. Dionne shall provide Mr. Chaney with a copy of the invoice denoting the costs of the copies of Convoy Dispatch which Dionne was distributing and which Chaney "confiscated" on November 12, 1991. A copy of the invoice should be sent simultaneously to the Election Officer. Within five days of receiving the invoice, Chaney shall reimburse Dionne and simultaneously submit an affidavit to the Election Officer demonstrating that payment has been made.

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

cc: Frederick B. Lacey, Independent Administrator, IBT
Don Williams, Regional Coordinator

³ Any appeal from this determination shall not stay the effectiveness of this cease and desist order. See, e.g., *Rules*, Article XI, § 2(z).