



OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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Michael H Holland
Election Officer

December 21, 1990

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343 South Dearborn Street
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VIA UPS OVERNIGHT

Carl Lindeman
Secretary-Treasurer
IBT Local Union 396
3435 Wilshire Blvd
Suite 2420
Los Angeles, CA 90010

Al Lozano
14541 Hutchcroft St.
La Puente, CA 91744

Daniel Kane
12026 Rose Hill Drive
Fontana, CA 92335

Re: Election Office Case No. ~~P-146~~ LU396-CLA

Gentlemen:

A pre-election protest filed under Article XI, § 1 of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*"). In his protest Carl Lindeman contends that Daniel Kane and Al Lozano are ineligible to run for the position of delegate to the IBT International Convention for the reason that each has been discharged and the discharge has been upheld through a final, binding arbitration award.

The investigation shows the following: Mr. Kane and Mr. Lozano were terminated by their employer, United Parcel Service, on November 21, 1990. On December 14, 1990, an Arbitrator upheld the terminations.

The IBT *Constitution* provides that in order to be eligible for election to any office in a Local Union, a member must be in continuous good standing in the Local Union in which he is a member and in which he is seeking office and actively employed at the craft within the jurisdiction of such Local Union, for a period of twenty-four (24) consecutive months prior to the month of nomination, for said office and

eligible to hold the office if elected. (Article II, Section 4 (a)(1)), *IBT Constitution*).

As to the eligibility requirement that the member actively works in the craft, the *Constitution* instructs that periods of unemployment will not automatically disqualify a nominee if he is actively seeking and available for work in the craft during the period of unemployment. (Article II, Section 4 (a)(1)). There is no presumption or evidence in this case that Messrs. Kane and Lozano are not actively seeking to work in the craft despite their termination.

In the event a member becomes unemployed, the *Constitution* directs the Local to either issue an honorable withdrawal card upon request or six (6) months after the month in which the member becomes employed. (*IBT Constitution*, Article XVIII, Section 6). Further, if a member on withdrawal deposits his withdrawal card and pays his dues in a timely manner, the period of withdrawal is not considered a break in continuous good standing. A member can remain in good standing even if on withdrawal. It follows that there is no presumption in this case that Messrs. Lozano and Kane are not members in good standing, despite their discharge.¹

For all of the foregoing reasons the protest is denied, and Messrs. Lozano and Kane are declared eligible to run for the position of delegate to the 1991 IBT International Convention.

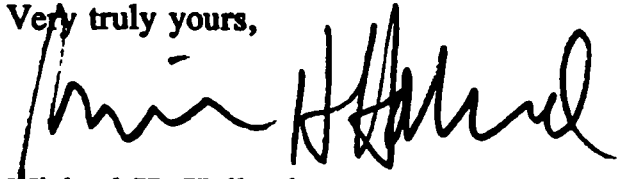
If any interested party is not satisfied with this determination, they may request a hearing before the Independent Administrator within twenty-four (24) hours of their receipt of this letter. The parties are reminded that, absent extraordinary circumstances, no party may rely upon evidence that was 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

¹ The Union seems to contend that Kane and Lozano should be declared ineligible because the convention is seven months from the date of discharge, November 21, 1990. The Election Officer notes even though the Arbitration award has been issued, not all appeals have been exhausted with respect to this case. Further, the Election Officer finds the Local Union's speculation that Kane and Lozano will lose their membership rights by virtue of unemployment or otherwise over the next six months is not a proper basis for determining eligibility.

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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,

A handwritten signature in black ink, appearing to read "Michael H. Holland", written in a cursive style.

Michael H. Holland

MHH/mjv

cc Frederick B Lacey, Independent Administrator, IBT
Geraldine L Leshin, Regional Coordinator