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Michael H Holland
Election Officer

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Chicago, IL 60604
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March 15, 1991

VIA UPS OVERNIGHT

Billy Leon Huff
610 North Vine Street
Anaheim, CA 92805

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

Re: Election Office Case No. P-453-LU396-CLA

Gentlemen:

A pre-election protest was timely filed pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*").¹ In his protest, Billy Leon Huff alleges that Business Agents have campaigned in automobiles supplied by the Union and during time paid for by the Union and in working areas, all in violation of the *Rules*. He alleges additionally that Business Agent Ned Hines removed his campaign literature from the Union bulletin board at Di Salvo Trucking in violation of the *Rules*.

The protest was investigated by Adjunct Coordinator Gerry Fellman. The investigation discloses the following: Huff is a candidate for delegate to the IBT International Convention. He is employed by UPS at its Cerritos facility. He states that Local 396 Business Agents Robert Kikuchi and Ned Hines distributed campaign literature at the Cerritos facility on February 1, 4, and 5, 1991. He also states that the Business Agents used a car owned by the Union to facilitate their campaigning. He states that on

¹The election in Local Union 396 was held on February 19, 1991. None of the allegations in this protest, even if a violation of the *Rules* were found, affect the outcome of the election nor does the protestor contend that the outcome of the election was affected.

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February 5, 1991, Business Agent and delegate candidate Bill Arnold campaigned at the UPS Soto facility in a work area, with the use of a car paid for by the Union.

With regard to the February 1, 1991 incident, Huff states that he saw Business Agent Kikuchi in the Union car at the Cerritos facility. Huff admits that he did not see anything else of Kikuchi's activities on that date. Since there is no evidence of any campaigning by Kikuchi on that date, there is no showing that the *Rules* have been violated. This aspect of the protest is DENIED.

The investigation shows that the named Business Agents did campaign on February 4 and 5, 1991. However, Kikuchi, Hines, and Arnold provided Adjunct Coordinator Fellman with documentation showing that they were either on approved leave, either paid or unpaid, during the hours that they spent campaigning at the Cerritos and Soto UPS facilities on February 4 and 5, 1991.

The *Rules* do prohibit any IBT member or candidate from campaigning during time that is paid for by the Union or by any employer. However, campaigning incidental to work or regular Union business or during paid vacation, paid lunches or breaks, or similar paid time off is not violative of the campaign contribution rules. *Rules*, Article X, § 1

Since the evidence shows that the Business Agents were not on Union paid time during the hours they spent campaigning on February 4 and 5, there is no violation of the *Rules*. This aspect of the protest is DENIED.

The investigation shows that Business Agents Arnold, Kikuchi, and Hines drove to the UPS facilities where they campaigned using a Union automobile. The Local Union issues the automobile to Business Agents, but permits them to use the car for commuting and de minimus personal use. On an annual basis the accountant for the Local Union determines the taxable portion for the incidental personal use of the automobile by the business representatives. The investigation shows that each Business Agent used his car to conduct some Union business on February 4 and 5, in addition to his campaign activity.

Under these circumstances, the Election Officer concludes that (1) because the Union permits the cars to be used for some personal business, and (2) because the Business Agents performed Union duties on the days at issue, the use of Union vehicles to travel to a campaign site is not violative of the *Rules*.

Huff also alleges that Business Agent Arnold campaigned in work areas at the UPS Soto facility in violation of the *Rules*. The investigation discloses that Arnold was campaigning at the Soto facility of UPS on February 4 and 5, 1991, from approximately 6.45 a m to 8.45 a m, handbilling near the entrance to the employee parking lot. At around 8.45 a m, Arnold entered the building and stopped at the personnel office to inquire about new employees who had not shown up at a Local 396 initiation meeting on February 3, 1991. While in the building, Arnold showed IBT member Jim Brown

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a piece of campaign literature Brown was on his way home, in the process of leaving the facility, at the time. There is no evidence that Arnold gave campaign literature to any member other than Brown

The Election Officer concludes that the evidence is insufficient to establish that Arnold engaged in any campaign activity other than the brief interchange with Brown. That incident appears isolated and incidental, and therefore not violative of the *Rules*. This aspect of the protest is DENIED.

Huff also alleges that Business Agent Arnold was permitted by UPS to campaign inside a restricted parking lot at its Soto facility, contrary to its own access policy and to the agreement reached with the Election Officer on access rights of non-employee IBT members. The investigation shows that Business Agent Arnold did campaign inside the employee parking lot, but outside the guard shack, i e , prior to entry into the facility. The Election Officer has confirmed with UPS that this parking lot is an unrestricted lot. Thus, UPS has agreed, consistent with the Election Officer's position, that all IBT members are entitled to campaign inside the fenced in parking lot in the area in front of the guard shack where Business Agent Arnold campaigned. Thus, this aspect of the protest is RESOLVED

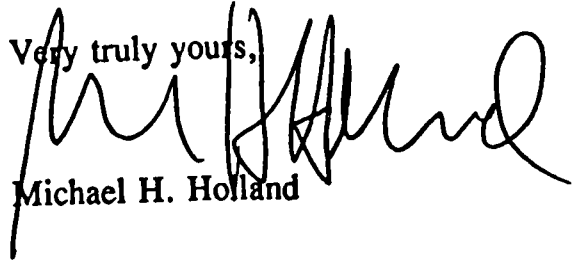
Huff's final allegation is that Business Agent Ned Hines removed campaign literature from the Union bulletin board located at Di Salvo Trucking. Huff has no direct evidence that Hines removed the literature, and Hines denies doing so. However, the Local provided a copy of a memo from Assistant Terminal Manager Lee Chavez in which he states that he has removed all campaign literature from Union bulletin boards, because the literature is not official Union business. There is no evidence in this case of past usage of Union bulletin boards for other than official Union business. The Election Officer concludes that there is insufficient evidence under these facts to conclude that the *Rules* have been violated. Based on the foregoing, this aspect of 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,

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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". The signature is fluid and cursive, with a large initial "M" and "H".

Michael H. Holland

MHH/mca

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

Martin Wald, Esq.
Schnader, Harrison, Segal & Lewis
Suite 3600
1600 Market Street
Philadelphia, PA 19103