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Election Officer

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March 11, 1991

VIA UPS OVERNIGHT

Rudy Hernandez
32276 Valiant Way
Union City, CA 94587

Albert Costa
Secretary-Treasurer
IBT Local Union 853
8055 Collins Drive
Oakland, CA 94621

Jim Travis
IBT Local Union 853
8055 Collins Drive
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Billie Peck
c/o Safeway Spice
c/o Local Union 853
8055 Collins Drive
Oakland, CA 94621

Sal Valente
c/o Safeway Spice
c/o Local Union 853
8055 Collins Drive
Oakland, CA 94621

Re: Election Office Case No. P-598-LU853-CSF

Gentlemen

Rudy Hernandez filed this pre-election protest pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") In his protest, Hernandez alleges that at Safeway Spice, where he works, he was confronted by Local stewards Billie Peck and Sal Valente, who accused him of posting campaign literature on the Union bulletin board and told him that this was not allowed in accordance with the directive of Local 853 Business Agent Jim Travis Mr Hernandez alleges that the Union bulletin board at the site has in the past been used for the posting of campaign literature Mr Hernandez also alleges that Billie Peck spoke to another member and told her she could not pass out campaign literature in non-work areas

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The subject of bulletin boards is covered in the collective bargaining agreement between Safeway Spice and the Local Union. Section 8 3 of the contract provides as follows:

The Employer shall provide a reasonable number of bulletin boards in places reasonably accessible to the employees covered by this Agreement for the purpose of posting notices of official Union business, such as times and places of meetings.

The Election Officer's investigation was unable to find any evidence that the Union bulletin board was ever used for posting of materials other than official Union notices. The Union Business Agent states that the Union bulletin boards were never so used. The management representative contacted by the Election Office investigator similarly denies any such usage.

On February 28, 1991, Safeway Spice issued the following:

"Union bulletin boards located by both timeclocks are to be used for official Union postings only (please refer to Union contract section 8 3) Please feel free to use lunchroom tables for anything else including Union political business "

The Election Officer investigator also spoke to Billie Peck, who denied telling any employee that she could not pass out campaign literature in non-work areas and has been unable to determine the identity of the employee allegedly spoken to by Ms Peck

Article VIII, § 10 (d) of the *Rules* provides in pertinent part that "No restrictions shall be placed on candidates' or members' pre-existing rights to use employer or Union bulletin boards for campaign publicity."

Thus, if the Union bulletin board at Safeway Spice had been previously used for campaign literature, it could so now be used. Alternatively, if the bulletin board was "general purpose" as opposed to an official Union board, and used on a regular basis for postings of matters in addition to or other than official Union business, the board could also be used for posting of campaign literature. Here, there is insufficient evidence to demonstrate that the board in question is not an official Union board always used solely for such purpose.¹

Article VIII, § 10 (a) of the *Rules* provides in pertinent part that "All Union members retain the right to participate in campaign activities, including the right to run

¹The employer's memorandum of February 28, 1991 indicates that campaign literature may be placed on lunchroom tables for distribution. Thus, IBT members employed at Safeway Spice have a means to display their campaign literature

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for office, to openly support or oppose any candidate, to aid or campaign for any candidate, to make personal campaign contributions. No candidate or member may campaign during his/her working hours. Campaigning incidental to work is not, however, violative of this section. Further, campaigning during paid vacation, paid lunch hours or breaks, or similar paid time off is also not violative of this section. See also Election Officer's Advisory on Political Rights. In the context of the allegations of this case, if there was evidence to support the allegations that the Union steward was prohibiting an employee from campaigning in non-work areas during non-work time, the *Rules* would be violated. However, there is no evidence that this in fact occurred.

For the foregoing reasons, this 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

MHH/mca

cc Frederick B. Lacey, Independent Administrator
Donald E. Twohey, Regional Coordinator