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March 27, 1991

**VIA UPS OVERNIGHT**

Bill Kelly  
8751 W 170th Place  
Orland Park, Illinois 60462

Robert Persak  
168 Forrest Street  
New Lenox, Illinois 60451

Orin Williams  
c/o Local Union 705  
300 South Ashland Avenue  
Chicago, Illinois 60607

Daniel C Ligurotis  
Secretary-Treasurer  
IBT Local Union 705  
300 South Ashland Avenue  
Chicago, Illinois 60607

John McCormick  
6574 O'Hare  
Portage, Indiana 46368

John Krok  
c/o Local Union 705  
300 South Ashland Avenue  
Chicago, Illinois 60607

Re Election Office Case Nos **P-600-LU705-CHI**  
**P-609-LU705-CHI**

Gentlemen

The pre-election protests were filed in the above-referenced cases in accordance with Article XI, Section 1 of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") Since the protests involve similar claims, they have been consolidated. A decision involving both protests is set forth below. The complainants, who are members of IBT Local Union 705 and candidates in the upcoming delegate election in Local Union 705, allege that business agents and stewards of Local Union 705 campaigned on company time in violation of the *Rules*. The protesters also allege that business agents and stewards of Local Union 705 engaged in acts of harassment and intimidation at three different UPS facilities which interfered with their campaigning rights in violation of Article VIII of the *Rules*.

I. Interference With Campaigning Rights at the UPS Facility at the Northbrook, Palatine, and Franklin Park UPS Facilities.

The complainants allege that business agents and stewards from Local Union 705 interfered with their attempts to distribute campaign literature to Local 705 members in the parking lot areas of the UPS facilities at Northbrook, Palatine and Franklin Park, Illinois. The investigation conducted by the Election Officer representative Deborah J. Schaaf, disclosed the following facts. On the morning of February 25, 1991, at approximately 7:00 a.m., Mr. McCormick and Mr. Persak, both of whom are candidates for delegate on the "Membership Slate" in Local 705's upcoming delegate election, went to the UPS facility in Palatine, Illinois to pass out campaign literature. At approximately 7:45 a.m., Mr. Orin Williams, business agent from Local 705 and two other Local 705 stewards began passing out "Ligurotis Team Slate" campaign literature in the parking lot area.

Mr. McCormick and Mr. Persak state that Mr. Williams and the two stewards began yelling obscenities at them. Mr. Williams, who is a candidate on the "Ligurotis Slate" team, states that both sides were yelling obscenities. All of the candidates stopped distributing campaign literature at approximately 8:15 a.m. because the bulk of the members employed at that facility had left the parking lot area at that time.

On the morning of February 27, 1991, Mr. McCormick and Mr. Persak went to the UPS parking lot at Franklin Park to distribute campaign literature. At approximately 7:40 a.m., the men were approached by John Krok, a Business Agent from Local 705. The complainants allege that Krok accused them of "wrecking his union" and referred to them as "lifetime members of 'Tear Down Unions' ". The complainants state that as the discussion became more heated, Krok and two unidentified stewards began yelling obscenities at them and threatened to "kick McCormick's ass."

Pursuant to this investigation, the Election Officer representative, Deborah Schaaf, interviewed Krok, who denied that he yelled at McCormick or Persak. His statements were contradicted by Lino Dimas, a security guard who works at the UPS facility at Franklin Park, also interviewed by Ms. Schaaf. Mr. Dimas stated that he recalled that two Teamsters who were not employed at the Franklin Park facility coming to distribute campaign literature on the morning of February 27, 1991. Dimas states that sometime between 7:30 and 8:00 a.m., a man walked by and started using "foul language." He said this man walked over to the complainants and that he looked "real pissed off, real upset." He looked like he was going to hit them. "The man walked over to them, "you know, like an umpire in a game -- up in their face." Dimas recalls that this man went in the building and later came out with a steward, and that the man and the steward again screamed obscenities at the complainants, but did not touch them. After a few minutes, Krok and the stewards went back into the terminal. The complainants remained in the parking lot for another half-hour, until all the members had exited the parking lot area.

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On February 28, 1991, at approximately 7 00 a m , Mr Kelly, Mr Persak and Mr McGinnis, arrived at the UPS facility at Northbrook, Illinois to distribute campaign literature to members in the parking lot area Mr McGinnis is a member of Local 710 and is a strong supporter of the "Membership Slate" candidates At approximately 7 00 a m , Louis Di Girolamo also arrived at the facility and began passing out literature in support of the "Liguoris Team Slate " Mr Di Girolamo is a Union steward at the facility and is also a member of the "Liguoris Team Slate " At approximately 7 30 a m , Di Girolamo was joined by Mr Ed Benesch, another Union steward at the Northbrook site

The "Membership Slate" candidates allege that Benesch and Di Girolamo yelled obscenities at them and called them names as they stood in the parking lot area distributing literature Mr Benesch and Mr Di Girolamo aver that both groups of candidates were yelling names and that Mr McGinnis started the conflict by accusing the Local 705 stewards of being "Danny Liguoris stooges " Mr Persak and Mr Kelly left the parking lot area at approximately 8 15 and Mr Benesch and Mr Di Girolamo left a few minutes later All candidates state that the bulk of the traffic in and out of the facility had ceased by that time

The *Rules* provide that all Union members retain the right to participate in campaign activities, including the right to run for office, to openly oppose or support any candidates, to aid or campaign for any candidate, and to make personal campaign contributions Included within the right to participate in campaign activities is the right to make unflattering and even negative campaign statements concerning one's opponent The model for free and fair Union elections is that of partisan political elections In those elections, contestants are generally allowed to make whatever assertions, allegations, misstatements of opinion or even of alleged fact, without legal sanctions for their truth or falseness The cardinal principal is the best remedy for untrue speech is more free speech, with the electorate being the final arbiter

Thus, the fact that campaign statements are allegedly false, irrelevant, or even defamatory, does not remove them from the protection of the *Rules* National Association of Letter Carriers v Austin, 418 U S 264 (1974)(uninhibited and robust debate encouraged in labor matters, even allegedly defamatory statements permitted), Salzhandler v Caputo, 316 F 2d 445 (2d Cir 1963)(statements critical of union officials, even if incorrect, protected) The policy encouraging robust political debate in the selection of delegates and international officers in the IBT is reflected in the *Rules'* prohibition against censorship of campaign literature

The evidence establishes that the statements allegedly made by the Business Agents and stewards did not interfere with the candidates' or their supporters' right to campaign at either the Palatine or Northbrook UPS facilities on the mornings in question, all campaigners remained in the area until the majority of members had left the parking lot In addition, it is undisputed that in both incidences, the "Membership Slate" campaigned for at least thirty minutes before the alleged name calling ensued Moreover

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the obscenities directed at the "Membership Slate" are the kind of insults that are frequently made in a heated argument. There is no allegation of any threat of physical contact at the Northbrook or Palatine UPS facilities before, during, or after the alleged obscene statements were made. The statements made by the Business Agents and stewards at those locations do not constitute a threat with the meaning of the *Rules*. Accordingly, the protests with respect to the alleged intimidation and interference with campaigning rights are DENIED.

Conversely, the evidence does establish that Mr. Krok and two unidentified stewards approached the complainants at the Franklin Park location in a menacing manner, and threatened to physically "kick their ass." The eyewitness account of Lino Dimas, the security guard, confirms the complainants' allegations that John Krok came up to them in an aggressive manner, yelling and pointing his finger at them as he called them names. I find that Mr. Krok's conduct constituted harassment of the complainants while they were engaged in activity protected under the *Rules*. I also find that Mr. Krok's conduct interfered with the complainants' ability to engage in campaign activities, the purpose for their presence at the UPS facility. The right to engage in political and campaign activities includes the right to be free from threats of physical violence made by Local Union officials. Accordingly, the protest involving the interference with campaign rights at the UPS facility at Franklin Park is GRANTED.

As a remedy, the Election Officer orders that Mr. Krok sign, duplicate and post the attached notice on all Local Union bulletin boards at the UPS facility at Franklin Park. The notice must be posted within twenty-four (24) hours of this decision. Mr. Krok shall also personally compensate in the amount of \$50.00, the Membership Slate, on whose behalf complainants were campaigning, for his interference with their campaign activities. Within three (3) days of his receipt of this decision, Mr. Krok shall submit an affidavit to the Election Officer demonstrating compliance with this decision.

## II Campaigning on Company and Union Time.

Various members of the "Membership Slate" also allege that Local 705 business agents and stewards campaigned on company or union time at the Palatine and Northbrook UPS facilities in violation of the *Rules*.

The investigation conducted by the Election Officer Representative disclosed the following facts. Mr. Orin Williams, who was a Business Agent from Local Union 705, arrived at the UPS Palatine facility on Monday, February 25, 1991 at approximately 7:45 a.m. Mr. Persak and Mr. McCormick were already in the parking lot area distributing literature to UPS employees. Pursuant to his duties as Business Agent, Mr. Williams normally visits the UPS Palatine facility twice a week, on Mondays and Thursdays. On February 25, 1991, after he noticed Persak and McCormick, he went and got his campaign literature from his briefcase and began distributing it. A few minutes after Mr. Williams began distributing literature, he was joined by two stewards from the facility, Mr. Terrence Fisk and an unnamed steward. Mr. Williams distributed

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literature for approximately fifteen minutes. Mr. Fisk, one of the Union stewards, distributed literature for approximately twenty minutes.<sup>1</sup>

On February 28, 1991, Mr. Persak and Mr. McCormick state that they observed Mr. Ed Benesch, steward from Local Union 705, campaigning on company time at the UPS Northbrook, Illinois facility. The investigation conducted by Deborah J. Schaaf disclosed the following facts: Mr. Kelly, Mr. Persak and Mr. McGinnis arrived at the UPS facility in Northbrook before 7:00 a.m. to distribute campaign literature. The three men stood in the parking lot approximately fifty feet from the guard house and passed out literature to members as they walked to and from the facility. A few minutes later, Mr. Di Girolamo, the Union steward, also came into the parking lot and began distributing literature to members. At approximately 7:30, Di Girolamo was joined by Ed Benesch.

At approximately 7:45, Mr. Benesch went into the facility and changed into his UPS uniform. He came back outside a few moments later and continued distributing literature. The protesters claim that he distributed literature until approximately 8:15 a.m. that morning. Mr. Benesch denies that claim and instead states that he distributed the literature until about 7:45 and then went inside to change into his uniform to prepare for work and that he only came outside briefly to give Mr. Di Girolamo a cup of coffee before his shift began.

Mr. Benesch's time card indicates that he punched in at 7:53 a.m. that morning. Mr. Kelly and Mr. Persak state that they left the parking lot at approximately 8:15 a.m. and at that point Mr. Benesch was still in the parking lot distributing literature in his UPS uniform. In support of their claim, the protestors submit a photograph of Mr. Benesch which they state was taken by them at approximately 8:15 as they stood next to Mr. Persak's car a few minutes before leaving.

Article VIII, Section 10 of the *Rules* provide that

No candidate or member may campaign during his or her work time. Campaign incidental to work is not, however, violative of this section. Further, campaigning during paid vacation, paid lunch-breaks or similar paid time off is not violative of this Rule. (Article VIII, § 10, p. 58, *Rules*)

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<sup>1</sup>The investigation revealed that Mr. Fisk's shift began at 3:00 a.m. and he was distributing the literature during his lunch-break time, which ran from 7:30 p.m. to 8:00 p.m. The unnamed steward distributed literature from approximately 7:40 to 7:58 a.m. The investigation did not establish the identity of the second steward. Thus, the protestor's allegation that he was campaigning on company time cannot be substantiated.

The *Rules* further provide that

All Union officers and employees, if members, retain the right to participate in campaign activities, including the right to run for office, to openly support or oppose any candidate, to aid or campaign for any candidate, or to make personal campaign contributions. However, such campaigning must not involve the expenditure of Union funds. Accordingly, members, officers, and employees may not campaign on time that is paid for by the Union. Campaigning incidental to regular Union business 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. (the *Rules*, Article VIII, § 10, p 59)

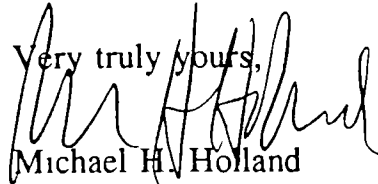
Based on the evidence submitted, I find that Mr. Williams distributed campaign literature on Union time in violation of the *Rules*. It is undisputed that he remained in the parking lot area at the Palatine facility for at least fifteen minutes. It is also undisputed that he did not conduct any legitimate Union business while remaining in the parking lot area and that his sole purpose in being in the parking lot area was to distribute campaign literature in support of Mr. Ligurotis' slate. Accordingly, the protest with respect to Mr. Orin Williams is GRANTED. To remedy this violation, I order Mr. Williams to compensate Local Union 705 for his time spent campaigning in the parking lot area in Palatine, Illinois on February 25, 1991, fifteen minutes. Within three (3) days of his receipt of this decision, Mr. Williams shall submit an affidavit to the Election Officer delineating the amount of his salary or wages from Local 705 and demonstrating compliance with the reimbursement portion of this decision.

The evidence establishes that Mr. Benesch also campaigned on company time in violation of the *Rules*. The photograph submitted to the Election Officer representative, shows Mr. Benesch standing in the parking lot area in his UPS uniform. Mr. Benesch's time clock demonstrates that he punched in at 7:53 that morning and was on the clock during the time that he was distributing campaign literature in the parking lot. Accordingly, the protest alleging that Mr. Benesch campaigned on company time in violation of the *Rules* is GRANTED. As a remedy, I order Mr. Benesch to compensate his employer, UPS, for the amount of time he spent campaigning on company time, fifteen minutes. Within three (3) days of his receipt of this decision, Mr. Benesch shall submit an affidavit to the Election Officer delineating the amount of his salary or wages from UPS and demonstrating compliance with the reimbursement portion of this decision.

The evidence does not establish that any other stewards or Business Agents campaigned on company or work time at the facilities on the dates in question. Accordingly, the protest with respect to these members is DENIED.

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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 upon 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  
Julie E. Hamos, Regional Coordinator

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



## NOTICE TO ALL LOCAL 705 MEMBERS

The Election Officer has determined that I have violated the *Rules for the IBT International Union Delegate and Officer Election* by interfering with members' rights to engage in campaigning and political activities related to the delegate and International Officer elections

All Local 705 members have the right to participate in Local 705's delegate and alternate delegate elections. This includes the right to openly support or oppose any delegate or alternate delegate candidate. This also includes the right to run for office, to aid or campaign on behalf of any delegate or alternate delegate candidate or slate of candidates and to personally contribute to the campaign.

All Local 705 members also have the right to participate in the IBT International Officer campaigns. This includes the right to openly support or oppose any candidates for International Office. This also includes the right to run for International Office, to aid or campaign on behalf of any candidate or slate of candidates, and to personally contribute to a candidate's campaign.

Neither I nor any other officer, business agent, steward or other agent or employee of Local 705 will interfere with such rights.

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JOHN KROK  
Business Agent, Local 705

*This is an official notice and must remain posted for thirty consecutive days from the day of the posting, and must not be altered, defaced, or covered by any other material.*