

OFFICE OF THE ELECTION OFFICER
INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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Election Officer

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July 18, 1991

VIA UPS OVERNIGHT

Wesley Epperson
1702 Evanston
Independence, MO 64052

Dan Johnson
President
IBT Local Union 41
4501 Van Brunt Blvd.
Kansas City, MO 64130

Re: Election Office Case No. P-779-LU41-MOI

Gentlemen:

The above referenced protest has been 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, Wesley Epperson alleges that his employer, United Parcel Service (UPS) has violated the *Rules* by prohibiting him from wearing a campaign pin in support of the candidacy of Ron Carey for General President of the IBT, while permitting other buttons or pins to be worn on the UPS uniform during working hours.

The protest was investigated by Adjunct Regional Coordinator William Eisler. The investigation discloses the following facts: Epperson has been employed as a driver by UPS for approximately 21 years. He is employed in Kansas City, Missouri at the UPS James Street facility. He presently serves as an alternate steward. In that capacity, Epperson wears a pin that identifies him as a job steward. During the recent Desert Storm operation, UPS provided its employees with another lapel pin supporting the troops involved in Desert Storm. Employees were encouraged to wear the pin both through newsletter articles, personal contact by supervisors and posted memos from UPS management. Epperson chose to wear the Desert Storm pin along with his steward's pin. The steward's pin and the Desert Storm pin are approximately the same size, around 7/8" x 1" in circumference. Following the distribution by UPS of the Desert Storm pin, Epperson commenced wearing a button supporting the candidacy of Ron Carey for General President of the IBT. This button in contrast to the lapel pins is approximately 2 1/4" in circumference. Further unlike the steward and Desert Storm pin which are muted in color, the campaign pin is a vivid red, white and blue. It states on its face "Elect Ron Carey-General President." Epperson wore all three buttons affixed to a plastic UPS pocket protector. On or about May 17, 1991, Epperson was informed by UPS feeder manager Sherri Davis that he could not wear the Carey button anywhere on the UPS uniform during duty time.

It is undisputed that IBT members employed by UPS in Kansas City have not been permitted to wear intra-Union campaign buttons in the past. UPS maintains that it has long had a strict dress and grooming code for those UPS drivers and other employees who come in contact with the public. The dress code includes a prohibition against wearing campaign buttons, including union campaign buttons. UPS maintains that its policy has been upheld by the National Labor Relations Board as well as in various arbitration decisions. United Parcel Service, Inc., 195 NLRB 441 (1972); United Parcel Service of New York, Inc., 7 LA 395 (Feinberg 1947). UPS states additionally that support for its dress code rules which permit the wearing of steward buttons and the Desert Storm button but not Union campaign buttons is found in the collective bargaining agreement between the parties at Article IV and Article VI.

Article IV of the UPS Teamster National Master Agreement provides in relevant part: "Job stewards, or designated alternates, shall be allowed to wear an identifying steward's badge, provided by the Union, at all times while on the Employer's premises." Article VI provides that "The Employer has the right to establish and maintain reasonable standards concerning personal grooming and appearance and the wearing of uniforms and accessories."

The Election *Rules* at Article VIII, § 10(d) provide that no restrictions shall be placed upon candidates' or members' pre-existing rights to engage in campaign activities, including wearing campaign buttons. In this case, however, there is no evidence that IBT members employed by UPS at this facility have a pre-existing right to wear intra-union campaign buttons.¹ The fact that UPS permitted and even encouraged the wearing of the Desert Storm pins does not create a right for employees to wear conspicuous union election campaign buttons. The Desert Storm pin is a small lapel pin that prominently features the American flag. The size of the pin as well as the message of the pin fall within the UPS uniform policy and guidelines. On the other hand the button that Mr Epperson wished to wear was far more conspicuous, both in size and by reason of its colors and the prominence of its message.

For these reasons, the UPS prohibition against the wearing of the campaign button at issue in this case and at the facility at which Mr Epperson works does not violate the *Rules*. The protest is DENIED.

¹The evidence indicates that at one or more other UPS facilities, UPS supervisors have permitted IBT members to wear campaign buttons, apparently despite the several UPS policy. Whether IBT members employed at those facilities have a right to wear campaign buttons - see *Helton v NLRB* 656 F 2nd 883(D C. Cir., 1981) (past practice prevails over contrary written requirements) - no such practice was established at the Kansas City, Missouri facility at which Mr Epperson is employed.

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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 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,

A handwritten signature in black ink, appearing to read "Michael H. Holland", written over the typed name below.

Michael H Holland

MHH/pjm

cc: Frederick B. Lacey, Independent Administrator
Martin Wald, Esq.
Michael D. Gordon, Regional Coordinator (For Information Only)
William Eisler, Adjunct Regional Coordinator