

OFFICE OF THE ELECTION OFFICER  
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
25 Louisiana Avenue, NW  
Washington, DC 20001

Michael H. Holland  
Election Officer

(202) 624-8778  
1-800-828-6496  
Fax (202) 624-8792

August 14, 1991

**VIA UPS OVERNIGHT**

Daniel Kane  
12026 Rose Hill Drive  
Fontana, CA 92335

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

**Re: Election Office Case No. P-840-LU396-CLA**

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Daniel Kane. Mr. Kane protests the refusal of Local 396 to accept his Union dues and the issuance to him by the Local of an honorable withdrawal card. By letter dated July 19, 1991, Local 396 advised Mr. Kane that the arguments Mr. Kane raised with the Local regarding the issuance of a withdrawal card had been denied; his previously submitted dues checks were returned with that letter.

Mr. Kane has been a member of Local Union 396 and was employed by a United Parcel Service facility within the Local's jurisdiction. On November 21, 1990, he was discharged from his employment. Mr. Kane contested his discharge by filing a grievance pursuant to the grievance procedures contained in the contract between United Parcel Service and IBT, a protest with the Election Officer and an unfair labor practice charge with the National Labor Relations Board.

The Election Officer denied the protest on the grounds that there was insufficient evidence that Mr. Kane's campaign activities were the motivating factor in his employer's decision to discharge him. The Election Officer noted in that decision that his investigation indicated that the motivating factor in the discharge decision was Mr. Kane's having filed a grievance; the Election Officer further opined that filing a grievance pursuant to a contractual grievance procedure is normally considered unlawful under the National Labor Relations Act. See Election Office Case No. P-067-LU396-CLA, affirmed 90-Elec.App.-23.

The National Labor Relations Board apparently concurred with the Election Officer's conclusion. On February 1, 1991, the Board issued an unfair labor practice complaint against United Parcel Service alleging that Mr. Kane's discharge was unlawful under the National Labor Relations Act.

On or about June 7, 1991, subsequent to the issuance of the unfair labor practice complaint by the National Labor Relations Board as described above, Local 396 issued a withdrawal card to Mr. Kane. The basis for the Local's determination to issue Mr. Kane an honorable withdrawal card was Article XVIII, § 6(a) of the IBT Constitution. This section of the Constitution provides that an unemployed member must be issued a withdrawal card six months after the month in which the member first becomes unemployed.

Mr. Kane admits that he is unemployed and has been so unemployed since November 21, 1990, a period in excess of six months. He claims, however, that his active pursuit of unresolved legal proceedings concerning his discharge precludes Local 396 from refusing to accept his dues and from issuing him an honorable withdrawal card. Mr. Kane claims that because the National Labor Relations Board has issued an unfair labor practice complaint concerning his discharge, he is entitled to remain a member of Local 396 as long as he properly tenders his monthly dues.

The Election Officer's jurisdiction is limited to the processes related to the nomination and election of IBT International Union Convention delegates and IBT International Union officers. He is without jurisdiction with respect to other Union matters. See, e.g., *Rules*, Preamble at pp. 1-2. The Election Officer cannot and does not exercise jurisdiction with respect to Local Union membership matters which do not implicate the delegate and/or International Union officer election procedures.

Denial of membership status does implicate the forthcoming International Union officer election in two ways. One must be a member in good standing in order to vote in such election. Further, the campaign rights guaranteed under the *Rules* are guaranteed only to IBT members; denial of membership rights may impact upon one's right to engage in campaign activities on behalf of International Union officer candidates. Thus, the Election Officer has jurisdiction to determine this protest, insofar as the allegations of the protest impact on the International Union officer election.

The *Rules* do not explicitly define the prerequisites that must be satisfied for an IBT member to vote. See, however, 1991 IBT International Union Election Plan, submitted to the United States District Court for the Southern District of New York by the Independent Administrator, August 8, 1991. Further, the *Rules* deal explicitly with eligibility requirements for a member to be eligible to run for any Convention delegate, alternate delegate or International officer position. The *Rules* provide at Article VI, § 2(b) that the active employment requirement may be excused when the unemployed member is actively pursuing an unresolved legal action challenging his suspension or discharge from employment. See also Brennan v. Lift Truck Builders, 490 F.2d 213 (7th Cir., 1974); and Brock v. UTU 126 LLM 3240 (N.D. Ind., 1987). It would be

anomalous to permit an IBT member to retain membership for purposes of seeking office, including International Union office, based upon his unresolved legal challenge to his discharge while denying a member the right to retain membership for purposes of voting and campaign participation in the election procedure. Accordingly, the Election Officer determines that Mr. Kane, as long as the presently pending unfair labor practice charge remains unresolved and provided he properly tenders his monthly dues, may retain membership in Local Union 396 for purposes of voting and otherwise participating in the 1991 International Union officer election.<sup>1</sup>

The Election Officer's decision extends only to those facets of membership which relate to the 1991 IBT International Union officer election. Thus, Mr. Kane, upon timely proffer of his monthly dues to Local 396 - whether or not dues are accepted by the Local - will retain eligibility to vote in the 1991 IBT International Union officer election. Further, Local 396 shall afford Mr. Kane the rights otherwise afforded members with respect to the 1991 IBT International Union officer election. Thus, Local 396 shall allow Mr. Kane to attend any Local Union meetings where matters relating to the 1991 IBT International Union election are covered and permit him to participate in any discussions and votes concerning those matters. Similarly, Local 396 shall allow Mr. Kane to engage in campaign activities in the same manner and to the same extent that it allows other Local Union members to so engage.

As noted above, the Election Officer's jurisdiction does not cover all items relating to Mr. Kane's Union membership. The Election Officer has jurisdiction only over those items which impact upon the 1991 IBT International Union officer election. Therefore, the Election Officer does not by this decision require Local 396 to afford Mr. Kane any rights of membership other than where the denial of membership rights would impact upon his participation in the 1991 IBT International Union officer election. Thus, Local 396 need not permit Mr. Kane to attend, for example, Local Union meetings in which the 1991 IBT International Union election is not a matter which comes before the membership. Similarly, during meetings which the Local is to permit Mr. Kane to attend because issues relating to the 1991 IBT International Union election are discussed, Local 396 need not permit participation by Mr. Kane on any other matters which are raised, discussed or voted upon. These matters and other matters relating to Mr. Kane's membership which do not implicate or impact upon the 1991 IBT International Union officer election are beyond the jurisdiction of the Election Officer and are to be determined, if at all, through appropriate internal Union processes as set forth in the Local's by-laws and the IBT International Union Constitution.

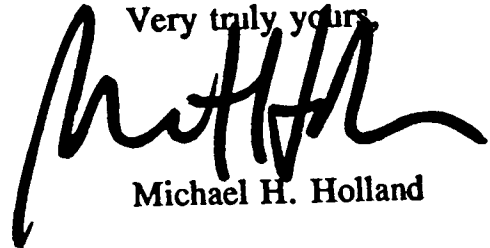
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<sup>1</sup>The Election Officer's decision here relates only to the membership right to be afforded to Mr. Kane by the IBT and its subordinate bodies. The issue of Mr. Kane's status *vis-a-vis* other persons or entities has neither been considered nor decided by the Election Officer in this decision. See Election Office case No. P-841-LU396-CLA, a protest decided today in a separate determination letter, where Mr. Kane claims that he is entitled to engage in campaign activities pending the resolution of the unfair labor practice complaint concerning his discharge.

Daniel Kane  
Page 4

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/mjv

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