



OFFICE OF THE ELECTION OFFICER  
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Election Officer

October 31, 1991

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**VIA UPS OVERNIGHT**

Daniel Torres, Jr.  
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Chino Hills, CA 91709

Michael J. Riley  
President  
IBT Joint Council 42  
1616 W. Ninth St.  
Room 500  
Los Angeles, CA 90015

R. V. Durham  
c/o Hugh J. Beins, Esquire  
Beins, Axelrod, Osborne  
& Mooney  
2033 K St., NW  
Suite 300  
Washington, D.C. 20006-1002

Everett J. Roberts  
Trustee  
IBT Local Union 63  
1616 W. Ninth St.  
Room 205  
Los Angeles, CA 90015

Roadway Express  
17401 Adelanto Road  
Adelanto, CA 92301

Chuck Mack  
President  
IBT Joint Council 7  
70 Hegenberger Road  
Oakland, CA 94621

**Re: Election Office Case No. P-995-LU63-CLA**

Gentlemen:

A protest was filed pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Daniel Torres, Jr., a member of IBT Local Union 63. In his protest, Mr. Torres makes the following contentions:

(1) On October 17, 1991, between approximately 4:00 and 5:30 p.m, candidates and supporters of the R. V. Durham Unity Team slate were campaigning in the parking lot at the Adelanto, California facility of Roadway Express. Included among the group were Michael J. Riley, Chuck Mack, Everett J. Roberts, Bob Kirkpatrick and Troy Baker. Mr. Torres, Bob Aquino, and other supporters of the Shea-Ligurotis Action Team slate then attempted to campaign in the parking lot but were prevented by the employer from doing so.

(2) General President candidate Ron Carey had campaigned at this facility in the lunch room and in the yard prior to the 1991 IBT International Union Convention. General President candidate Durham and General Secretary-Treasurer candidate Harold

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Leu had campaigned at this facility in the yard on October 17, 1991 for about 40 minutes. Durham, Leu, Walter Engelbert and other supporters of the R. V. Durham Unity Team had campaigned at this facility in the lunch room on October 17, 1991 at about 6:00 p.m. Torres apparently contends that candidates on the Shea-Ligurotis Action Team were or will be denied similar access.

(3) Riley, Mack and Roberts are employees of the Union and were campaigning on Union-paid work time.

(4) Riley, Mack and Roberts were using Union owned vehicles for campaigning purposes.

These charges were investigated by the Washington, D.C. staff of the Election Officer, Regional Coordinator Geraldine Leshin and Adjunct Regional Coordinator Michael Franklin.

In early October 1991, Roadway Express issued a special solicitation rule for the 1991 International Union officer election. This policy permits all IBT members--whether or not employed by Roadway--access to the exterior of Roadway's facilities for campaigning purposes. That policy contains a procedure for prior notification to the employer by IBT members not employed at the facility who desire access to engage in campaigning on Roadway's property. The policy was disseminated by Roadway to all nominated International Union officer candidates. The Election Officer notes that Roadway's policy, absent past practice permitting greater access at any particular facility, and including the notification requirement, is in conformity with Article VIII, § 10(d) of the *Rules* as amplified by the Election Officer in his Advisory on Political Rights.

The October 17 campaigning at the Adelanto parking lot by the R. V. Durham Unity Team supporters had been pre-arranged with Roadway weeks in advance of the date, in conformity with Roadway's policy. Although that policy has been distributed to all nominated candidates, Torres, Aquino and approximately 15 other supporters of the Shea-Ligurotis Action Team slate did not give prior notice of their visit. For this reason, they were denied access on October 17. The employer has affirmed that it will provide equal access to the supporters of the Shea-Ligurotis Action Team slate and all other IBT International Union officer candidates and supporters--including Torres and Aquino--upon receipt of prior notice as set forth in Roadway's policy. The Election Officer notes that the Shea-Ligurotis Action Team has given written notice of its intent to campaign at this facility on October 31, 1991.

The next portion of Torres' protest concerns an alleged denial of access to the interior of the Roadway facility at Adelanto to candidates on the Shea-Ligurotis Team in contrast to the access previously purportedly provided to other International Union

officer candidates. Article VIII, § 10(d) of the *Rules* provides that no restrictions shall be placed upon candidates' or members' pre-existing rights to solicit support, distribute leaflets or literature, conduct campaign rallies, etc. on employer premises. As noted in the Advisory Regarding Political Rights, issued on December 28, 1990, pre-existing rights are those established under substantive law or rights established by reason of the prior practices of the employer. There is no substantive legal right for IBT members not employed at a particular employer to campaign in the interior of that employer's facility. In order to establish past practice, there must be actual knowledge by company officials of such practice or the practice must have occurred on a sufficient number of occasions and/or a sufficient length of time on any occasion so that employer acquiescence may be inferred.

Joe Koury, the Terminal Manager at the Adelanto facility, states that, since he came to the facility in July 1991, no candidate has been permitted to campaign at the facility other than in the parking lot. The Election Officer's investigation found no evidence to the contrary.

In an earlier matter involving this facility, the alleged Carey access upon which Torres relies, Election Office Case No. P-641-LU63-CLA, Carey was denied--not granted--access to the interior of the facility. The Election Officer, in a decision entered on March 20, 1991, found no evidence to show that campaigning had been previously permitted inside the facility, and found no violation of the *Rules* by reason of the company's refusing to permit Carey to campaign at the loading dock and accordingly denied the protest filed on Carey's behalf.

On October 17, 1991, Durham--unbeknownst to the company--entered the yard, a work area, for campaign purposes. When Koury found Durham in the yard, he immediately asked him to leave and Durham complied. Koury had no prior knowledge of Durham being in the yard. There is no evidence that Leu was ever in the yard. There is no evidence to support the contention that Durham, Leu, Engelbert or other supporters of the R. V. Durham Unity Team slate were in or campaigned in the lunch room on October 17. Further, assuming such campaign activities occurred, the record is clear that the employer lacked knowledge of any such campaigning in its lunch room.

On the basis of these findings, there is no evidence of a company prior practice permitting campaign activities in the interior its Adelanto terminal facilities by IBT members not employed by it. There is no evidence that campaigning has ever been permitted in work areas of this facility. such as the dock or yard; there is no evidence that campaigning has been permitted in the lunch room except by IBT members employed by Roadway at its Adelanto facility.

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The remainder of Torres' allegations relates to alleged Union resources being used to finance Durham's campaign. Mack, Riley and Roberts each took vacation days to campaign on October 17. Article VIII, § 10(b) of the *Rules* provides that campaigning by Union officers and employees during paid vacation is permissible. Thus, the campaigning on paid vacation does not violate the *Rules*.

Mack utilized a rental car for campaigning on October 17. No Union funds were used to pay for the rental of the car. Riley and Roberts each utilized Union-owned cars. However, they each did so in conformity with the Unions' policies permitting officers to have use of those cars for personal business at the officers' own expense.

In a previous Election Office matter, In Re Gregory/Spurgeon and IBT Local Union No. 135, affirmed 91-Elec. App.-135 (SA), the Independent Administrator considered a similar complaint involving the use of a Union-owned car for campaigning purposes. The Independent Administrator affirmed the Election Officer's ruling that use of the car under circumstances as exist here was not an improper campaign contribution by a Union in violation of the *Rules*. "... Given that the Local Union cars are used by the business agents for personal reasons, it is not a violation of the *Election Rules* for a business agent to use his car to travel to a work site to campaign." Id. at page 4. Accord: Election Office Case No. P-1004-LU63-CLA.

Accordingly, this portion of the protest is DENIED in its entirety.

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

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

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