



OFFICE OF THE ELECTION OFFICER
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Michael H Holland
Election Officer

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February 18, 1991

VIA UPS OVERNIGHT

Rudy Hernandez
32276 Valiant Way
Union City, CA 94587

Jim Travis
Teamsters Local 853
8055 Collins Drive
Oakland, CA 94621

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

Re: Election Office Case No. P-476-LU853-CSF

Gentlemen.

A pre-election protest was filed under Article XI, Section 1 of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Rudy Hernandez, a member of Local Union 853. Mr. Hernandez alleges in his protest that on February 6, 1991 a Business Agent for Local 853 was campaigning on Union-paid time at the Safeway Spice plant in Fremont, California

The Election Officer has conducted an investigation of this protest. There is no dispute as to the relevant facts. As stated in the protest, Mr. Travis, a Business Agent for Local 853, was on the premises of the Safeway Spice plant, in connection with Union business, namely the election of shop stewards. The election was scheduled to take place between 10:30 and 11:30 a.m. Prior to that time, Mr. Travis held a meeting with the four members who were running for the position of steward. At that meeting, Mr. Travis told the candidates for steward that he had received a number of requests for information regarding the upcoming election for IBT International President and that he was leaving information on a table in the lunch-room. Mr. Travis relayed the same information to the other Union members at the start of their scheduled lunch-breaks at 10:30 a.m. and 11:30 a.m. Mr. Travis states that during the period 10:30 a.m. to 11:30 a.m. he was on his lunch break, having another meeting scheduled with Company management at 11:45 a.m. Mr. Hernandez states that several hundred Durham-Mathus flyers were present in the lunch-room after Mr. Travis's visit.

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Article VIII, Sections 10(b) and (c) of the *Rules* provide that Union officers and employees may not campaign on time paid for by the Union, unless such campaigning is incidental to regular Union business. Union officers and employees may campaign during paid vacation, paid lunch hours, or breaks, or similar paid time off. However, Union funds, facilities, equipment, stationery, etc. may not be used to assist in campaigning unless the candidate reimburses the Union for such costs, and the goods and services are equally available to all candidates, and all candidates are notified in advance of the availability of the goods and services.

As stated above, Mr. Travis contends that his actions were not in violation of these *Rules*, because he was on his paid lunch hour and the distribution of the literature was incidental to his legitimate business reasons for his presence at the plant. Mr. Travis further contends that he was not campaigning, but merely responding to members' requests for literature regarding the upcoming election for International President and he was complying with that request, but not campaigning for any person at that time. Mr. Travis further stated that he told the members that he would leave any information that he received on the table in the lunch-room.

Based on the foregoing, the Election Officer determines that Mr. Travis was on legitimate Union business and the placing of the literature in the lunch-room was incidental to his legitimate Union business on the premises of the Safeway Spice plant. If Mr. Travis had spent additional time actually campaigning or distributing literature, the activity would no longer be considered incidental. Therefore, under these facts, the mere placement of the literature did not violate the *Rules*.¹ Accordingly, the protest is **DENIED**.

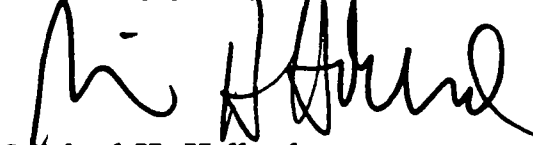
If any person is not satisfied with this determination, he may request a hearing before the Administrator within twenty-four (24) hours of his receipt of this letter. Such request shall be made in writing and shall be served on Administrator Frederick B. Lacey at LeBoeuf, Lamb, Leiby & MacRae, One Gateway Center, Newark, N.J. 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. The parties are reminded that

¹The fact that this literature was in the possession of the Local is the subject of a protest presently pending in the Election Office. The determination of this protest is not in any way dispositive of the protest filed concerning the method used to distribute the literature to the Locals.

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absent extraordinary circumstances, no party may rely upon evidence that was not presented to the Office of the Election Officer in any such appeal.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael H. Holland". The signature is written in a cursive style with a large initial "M" and "H".

Michael H Holland

MHH/mca

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