



OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
25 Louisiana Avenue, NW
Washington, DC 20001
(202) 624 8778
1 800 828 6496
Fax (202) 624 8792

Michael H Holland
Election Officer

Chicago Office
% Cornfield and Feldman
343 South Dearborn Street
Chicago, IL 60604
(312) 922 2800

March 22, 1991

VIA UPS OVERNIGHT

Jack H Blevins, Jr
6128 W Monte Cristo
Glendale, Arizona 85306

Jim Goodwin
President
IBT Local Union 104
1450 South 27th Avenue
Phoenix, Arizona 85009

Re: Election Office Case No P-648-LU104-RMT

Gentlemen

A pre-election protest was filed in accordance with Article XI, Section 1 of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") The protest was filed by Jack Blevins, who is a member of IBT Local Union 104 in Phoenix, Arizona and is a candidate in Local 104's upcoming delegate election In his protest, Mr Blevins alleges that Jim Goodwin, president of Local 104 and candidate in Local 104's upcoming delegate election, campaigned on Union time and distributed campaign flyers in work areas at the Huntington Street UPS facility, in violation of Article VIII of the *Rules*

The investigation conducted by Bruce Boyens, Regional Coordinator, disclosed the following facts Mr Goodwin is a full-time employee of IBT Local Union 104 Mr Goodwin stated that he went to the UPS facility on Huntington Street to distribute campaign literature at 6 30 p m on March 6, 1991 Mr Blevins alleges that Mr Goodwin went to the facility and began to distribute literature at approximately 5 00 p m, not 6 30 pm, on March 6, 1991 However, the investigation revealed that Mr Blevins did not actually see Mr Goodwin at the facility on that date, but instead based his complaint on reports he had allegedly received from other employees Mr Boyens requested that Mr Blevins submit the names of those employees who actually saw Mr Goodwin at the UPS facility on that date at approximately 5 00 p m Mr Blevins has not submitted any names to Mr Boyens The Election Officer investigation has uncovered no evidence that Mr Goodwin was at the UPS facility prior to 6 30 pm

Mr Goodwin states that he was not working at 6 30 p m , which was the time that he went to the UPS facility to distribute his literature. The investigation established that Mr Goodwin normally worked from 8 00 a m to 5 00 p m. Once Mr Goodwin arrived at the facility, he went to an area where drivers normally congregate to fill out daily reports and other required paperwork. Mr Goodwin stated that he placed his campaign literature on the counter in this drivers' area. Mr Goodwin further states that he was observed by a UPS supervisor as he placed his literature on the counter¹

Pursuant to his investigation, Mr Boyens interviewed Ron Hutter, UPS Employee Relations Manager for UPS Phoenix, Arizona, who stated that UPS policy permitted employees to distribute campaign literature only in non-work areas during non-work times. Mr Hutter stated that the drivers' room where Mr Goodwin placed his literature was considered a work area. Mr Hutter further stated that Mr Goodwin's distribution of campaign literature in that area violated company policy.

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

All Union officers and employees, and 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, and to make personal campaign contributions. However, such campaigning must not involve the expenditure of Union funds. Accordingly members, officers, and employees of the Union 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 evidence establishes that Mr Goodwin went to the UPS facility at approximately 6 30 p m on March 6, 1991. The evidence further establishes that Mr Goodwin's normal work hours are from 8 00 a m to 5 30 p m. Thus, Mr Goodwin was not on work time as a Local Union employee at the time that he went to the facility to distribute the literature. Accordingly, Mr Goodwin did not campaign on Union time in violation in the *Rules*. Thus, Mr Blevins' claim with respect to this issue is **DENIED**.

The Election Officer's Advisory Regarding Political Rights (Michael H Holland, December 28, 1990) provides, among other things, that

¹The investigation did not reveal the identity of the UPS supervisor who allegedly observed Mr Goodwin placing campaign literature on the counter in the drivers' area.

All IBT members have the right to campaign -- talk to fellow members, hand out literature, pass petitions, and the like -- in non-work areas of their employer's premises during non-work times. Neither the employer or the Union can prevent such campaign activities. NLRB v. Magnavox, 415 U S 322 (1974), Eastex, Inc. v. NLRB, 437 U S 556 (1978), District Lodge 91, International Association of Machinists v. NLRB, 814 F 2d 876 (2nd Cir 1987), NLRB v. Methodist Hospital of Gary, Inc., 732 F 2d 43 (7th Cir 1984)

The evidence establishes that Mr Goodwin believed that the area where he left the literature was a non-work area. Mr Goodwin's belief was confirmed by the fact that he was observed by a UPS supervisor who did not ask him to leave the area or to remove his literature. Notwithstanding that fact, the record also establishes that the area where drivers congregate to fill out daily reports and paperwork is not considered a non-work area by UPS management. Thus, Mr Goodwin's distribution of literature in the drivers' room constitutes a technical violation of the *Rules*.

There is no evidence to support Mr Blevin's allegations that UPS permitted Mr Goodwin to leave the campaign literature on the counter because he is an officer of the Local. However, despite the fact that there is no evidence of employer favoritism or discrimination, the Election Officer views any allegations of unfair treatment or candidate discrimination with great concern.

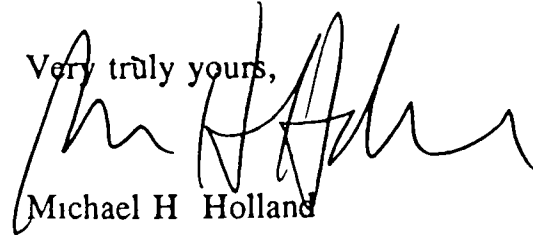
The Election Officer has contacted UPS in reference to the *Rules* requirement that employers adhere to a policy of absolute neutrality in the 1991 IBT International Union delegate and International officer elections. UPS has reiterated its policy of complete neutrality to the Election Officer representative and has assured the Election Officer that it will further reiterate such policy to all of its supervisory employees. UPS further assures the Election Officer that it will not engage in any form of discrimination against any candidate or groups of candidates. Accordingly, the protest is **RESOLVED**.

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,

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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". The signature is fluid and cursive, with a large initial "M" and "H".

Michael H Holland

MHH/ads

cc Frederick B Lacey, Independent Administrator
Bruce Boyens, Regional Coordinator
Martin Wald, Esq