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September 17, 1991

VIA UPS OVERNIGHT

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2207 Royal St.
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Chemical Leaman Tank Lines, Inc.
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Joe Comeaux
c/o IBT Local 969
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Company Members of the
Chemical Leaman Tank Lines, Inc./
IBT Joint Grievance Committee
Highway 301 Industrial Park
St. Gabriel, LA 70776

Robert Louis
Business Agent, IBT Local Union 270
2207 Royal Street
New Orleans, Louisiana 70177

Re: Election Office Case No. P-811-LU270-SEC

Gentlemen:

A protest was filed pursuant to Article XI, § 1 of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules"). The protest was filed by Jeffery Giaque, who is a member of Local 270 and was a candidate for alternate delegate in Local 270's recent delegate election. In his protest, Mr. Giaque contends that his termination by Chemical Leaman Tank Lines was because of his participation in Local 270's delegate election, and his political activities in support of Teamsters for a Democratic Union ("TDU") and Ron Carey's candidacy for IBT General President. Mr. Giaque further contends that the Joint Area Grievance

Committee assigned to review his discharge also discriminated against him because of his political activities. Mr. Giaque also alleges that Robert Louis, the business agent from Local 270 did not fairly represent him before the Joint Area Grievance Committee, because of Mr. Giaque's political activities. An investigation was conducted by Don Williams, the Election Officer Regional Coordinator. The investigation disclosed the following facts.

I. Background Facts

Prior to May 6, 1991, Jeffery Giaque was employed as a truck driver for Chemical Leaman Tank Lines, Inc. He had been so employed for four years. On April 23, 1991, Mr. Giaque was driving a chemical tanker from Shreveport, Louisiana to Dallas, Texas. Shortly after leaving the St. Gabriel terminal in Shreveport, Louisiana, Mr. Giaque attempted to negotiate a left-hand turn with the tanker at an intersection approximately five blocks from the terminal. Mr. Giaque made a left-hand turn with the truck and as he attempted to straighten out the wheel, the tanker tipped over and caught on fire.

The local police evacuated residents of a nearby hotel due to the possibility that the remaining contents of the truck would ignite and explode. A substantial portion of the truck was burned. According to company representative, Charles Jowers, the terminal manager at the Chemical Leaman Tank Lines St. Gabriel terminal, the truck was destroyed. Damages were estimated to be approximately \$100,000.

When the police and company representatives arrived at the scene of the accident, Mr. Giaque informed them that the steering wheel locked as he was half-way through the turn, and that he was unable to straighten the wheels out. Mr. Giaque claims that the steering lockage caused the truck to flip over.

The terminal manager, Charles Jowers, inspected the accident approximately five hours after it occurred. Mr. Jowers concluded that the accident was caused by Mr. Giaque's travelling too fast as he approached the turn and waiting too long before turning the wheel. Mr. Jowers believes that this combination of circumstances caused the liquid chemical in the tanker to "slosh" to the right, making the vehicle unstable. Mr. Jowers claims that, at this point, Mr. Giaque must have panicked and hit the brakes, which caused the tractor to roll over.

Mr. Jowers further states that the police officer investigating the accident concurred in Mr. Jowers' determination as to the cause for the accident. The police report filed by the officer investigating the accident indicates that the investigating officer did not observe any defects to the steering wheel or the steering column. The police report notes that Mr. Giaque stated that he braked the vehicle immediately before the accident.

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On April 25, 1991, the company advised Mr. Giauque that they would be conducting an investigation into the accident and that he could be subject to disciplinary action up to and including discharge. On May 6, 1991, Chemical Leaman Tank Lines, Inc. advised Mr. Giauque that the company had decided to classify the accident as a "major preventable." The company further advised that due to the nature of the accident, the cost involved, and in accordance with Article 9, Section a.1. of the collective bargaining agreement, the company had decided to terminate Mr. Giauque's employment.

After receiving notice of his discharge, Mr. Giauque filed a grievance in accordance with Article 7 of the contract. Local 270 Business Agent Bob Louis was assigned to handle the grievance. Mr. Giauque and Mr. Louis met with company officials Tom Green and Charlie Jowers on May 23, 1991. During this meeting, Mr. Giauque requested reinstatement with back pay. The company refused to reinstate him.

On July 9, 1991, a hearing was conducted before the Joint Area Grievance Committee in Mobile, Alabama to review Mr. Giauque's discharge. In accordance with Article 7 of the collective bargaining agreement, three company representatives and three Union representatives served on the Joint Area panel. Mr. Bob Louis represented Mr. Giauque before the Joint Area Grievance Committee. During the hearing Mr. Louis argued that the facts did not support the Company decision to declare the accident a "major preventable" accident.

The six members of the committee rejected the arguments advanced by Mr. Louis and Mr. Giauque and unanimously voted to uphold the company's termination decision. After receiving the Joint Area Committee's decision, Mr. Giauque filed the above-referenced protest with the Election Officer.

II. Allegations of Employer Retaliation.

Mr. Giauque alleges that Chemical Leaman Tank Lines' decision to discharge him after the conclusion of its accident investigation was motivated by the company's desire to punish him for participation in political activities, namely his candidacy for alternate delegate and his support of Ron Carey's candidacy for IBT International President. Don Williams, the Election Office Regional Coordinator, interviewed Mr. Giauque in reference to this allegation and requested that Mr. Giauque provide any facts to support the claim of discrimination. Mr. Giauque was unable to provide Mr. Williams with any facts relating to his discharge to support his allegations. Instead Mr. Giauque relies on incidents which allegedly occurred prior to his April 23, 1991 accident.

As proof that Chemical Leaman's decision to terminate him was retaliatory in nature, Mr. Giaque submits affidavits from James Graef and David McCabe. Both Mr. Graef and Mr. McCabe are employed by Chemical Leaman Tank Lines, Inc. Mr. McCabe states that on May 5, 1991, he was fired for failing to report a "minor preventable accident." Mr. McCabe grieved his discharge and on June 5, 1991, he was reinstated. According to McCabe, on the date of his reinstatement, as he was standing talking to Business Agent Robert Louis, Charlie Jowers told him to "stop listening to outside parties." Jowers explained that he was not referring to "you, Louis or the Teamsters, we're talking about some of the other problems we have around here."

In the affidavit submitted by Mr. Graef, he states that during the recent delegate election, Gary Bailey, the regional manager of Chemical Leaman Tank lines, Inc., told him "you are supporting the slate against the incumbent officers and we cannot let you bring the materials in here, you are causing trouble, do not go on company property."

Mr. Giaque also claims that other drivers who experienced similar accidents were not terminated by the company. Mr. Louis, at Mr. Giaque's request, obtained the dollar amount of the accident damage caused by four other Leaman drivers whom Mr. Giaque claims were treated more leniently than he was. Of the four accidents, the greatest damages incurred were only 50% of the loss caused by Mr. Giaque's accident. The investigation did not disclose other grievance cases to support Mr. Giaque's claim. In fact, the investigation conducted by the Election Officer established that whenever the company classified an accident resulting in significant losses as "major preventable," the individual involved was discharged.

After reviewing the police report and prior to issuing its discharge letter, the company requested that Mack Truck, Inc., the manufacturer of the truck, investigate the steering column in the truck to determine whether there was any evidence of steering wheel lockage. The Mack Truck mechanics assigned to inspect the vehicle reported that there was no evidence of any mechanical or structural problems with the steering column.

Mr. Williams interviewed Charlie Jowers, the St. Gabriel terminal manager, in reference to Mr. Giaque's allegations. Mr. Jowers denied that the company's decision to discharge Mr. Giaque was in any way related to Mr. Giaque's political activities. To support his claim that he harbored no animosity towards Giaque's political views, Mr. Jowers recalls that at one point during the IBT delegate campaign in Local 270, he discovered that Mr. Giaque had taped a campaign notice to the outside of the glass case of a bulletin board. Mr. Jowers stated that, normally speaking, he would not have permitted materials to be posted on the outside glass, but declined to remove Mr. Giaque's campaign literature because he wanted to insure that Mr. Giaque had the

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opportunity to publicize his candidacy. Mr. Jowers further stated that Mr. Giauque's campaign literature remained on the glass portion of the bulletin board for approximately one month before it was removed by a bargaining unit member.

In evaluating claims of employer retaliation, the Election Officer has adopted the mixed motive analysis applied by the National Labor Relations Board in Wright Line, 251 NLRB 1083 (1980), enf'd 662 F.2d 899 (1st Cir., 1981), cert denied 455 U.S. 989 (1982). See In Re Coleman and Advance Transportation Company, 90-Elec.App.-18 (SA) (December 14, 1990). The Wright Line "mixed motive" rule provides that

the General Counsel make a *prima facie* showing sufficient to support an inference that the protected conduct was a "motivating factor" in the employer decision. Once this is established, the burden will shift to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct.

Thus having established a *prima facie* case of an unlawful motivation contributing to a decision to discharge, the burden of proof under Wright Line shifts to the employer to prove that the discharge would have occurred for reasons even absent this protested activity.

The evidence submitted by Mr. Giauque is insufficient to make out a *prima facie* case that Mr. Giauque's political activities were a motivating factor in the company's decision to discharge him. However, even if the Election Officer were to find that Mr. Giauque had made out a *prima facie* case under the Wright Line analysis, the facts clearly indicate that Chemical Leaman could satisfy its burden of demonstrating that Mr. Giauque would have been discharged even in the absence of his political activities. The company conducted an investigation into the accident and determined that the accident should be classified as a "major preventable." It is not unreasonable to classify an accident causing \$100,000 in damages as major. The reports by both the police and the Mack Truck representative constitute a sufficient basis for the company's position that the accident was preventable.

The labor contract provides that employees may be terminated for causing "major preventable" accidents. The evidence further establishes that Chemical Leaman routinely discharges employees for accidents classified as "major preventable," particularly where the damage and losses resulting from the accident are substantial. The Election Officer investigation found no preventable accidents where the damage was

substantial but the employee was not discharged. The four accidents to which Mr. Giauque refers all resulted in far smaller losses to the company.

In conclusion, the investigation did not reveal sufficient facts showing under the Wright Line analysis to support the allegations of employer retaliation. Accordingly, Mr. Giauque's protest with respect to this claim are DENIED

III. Mr. Giauque Allegations Concerning the Joint Area Grievance Committee

Mr. Giauque also alleges that the three Union representatives on the Joint Area Grievance Committee discriminated against him based on his political activities. The three Union designees on the Committee were Jerry Burnthorn, Secretary-Treasurer and business agent for Local 991; Bill Sowell, business agent from Local 988; and Joseph Comeaux, Secretary-Treasurer of Local 969. Mr. Giauque based his allegation on the fact that the three Union members serving on the Committee unanimously voted to uphold the Committee's decision. Mr. Giauque claims that the only plausible explanation for the unanimous vote among the Union representatives is that each of the three Union representatives were aware of and hostile to his political activities. Mr. Giauque could offer no evidence demonstrating the alleged hostility. Mr. Williams interviewed all three union Committee members in reference to Mr. Giauque's allegations.

On July 18, 1991, Mr. Williams interviewed Jerry Burnthorn, Secretary-Treasurer and business manager of Local 991 of Mobile, Alabama. Mr. Williams asked Mr. Burnthorn if he recalled the hearing held in Mobile, Alabama involving Jeffery Giauque. Mr. Burnthorn responded that he did not know the man but he did recall a case involving the rolling over of a tractor and tank trailer somewhere near Shreveport, Louisiana. Burnthorn stated that he had 20 years experience handling tractor trailers. It was his considered opinion that the driver was going too fast and that fact had caused the accident. Burnthorn further stated that the company had checked the tractor steering mechanism after the accident because of Giauque's claim that the steering had locked up and no mechanical problems with the steering wheel or the steering column were discovered. Burnthorn also stated that he believed that even if the steering wheel had locked up, the tractor trailer would not have rolled over unless the driver was going too fast.

Mr. Williams asked Mr. Burnthorn if he recalled hearing anything about Mr. Giauque prior to the hearing. Mr. Burnthorn answered that he had never met Mr. Giauque prior to the hearing and that he had no information about Mr. Giauque's politics or the fact that Mr. Giauque was a strong supporter of TDU and Ron Carey. Mr. Burnthorn further stated that there was no discussion of Mr. Giauque's political activities at the hearing.

Mr. Burnthorn also informed Mr. Williams that, as the chairman for the Union representatives, it was his normal practice to ask any grievant whether he/she felt properly represented before the Committee. Mr. Burnthorn recalls that he did ask Mr. Giauque whether Mr. Giauque was satisfied with the representation he received and whether he had any new or additional information to add. Mr. Burnthorn states that Mr. Giauque responded that he felt that he had been properly represented and that he had nothing new or additional to add to the testimony previously presented.

On July 18, 1991, Mr. Williams interviewed Bill Sowell, Business Agent from Local 988. Mr. Sowell denied Mr. Giauque's allegations that his vote upholding the company's decision to discharge Mr. Giauque was discriminatorily motivated. Instead Mr. Sowell stated that he listened to the testimony presented and agreed with the company's assessment that the accident could have been prevented if Mr. Giauque was not traveling so fast. Mr. Sowell stated that his decision was based on the fact he had driven for Chemical Leaman some years earlier, and that all experienced drivers should be well aware of the requirement to make turns cautiously. Mr. Sowell also said that prior to the Joint Area Grievance Committee hearing, he had never heard of Mr. Giauque and did not know anything about Mr. Giauque's politics, his participation in Local 270's delegate election, or his support for TDU or Ron Carey. Mr. Sowell further stated that at no time during the Committee hearing did anyone discuss or make reference to Mr. Giauque's political activities.

On July 16, 1991, Mr. Williams interviewed Joseph Comeaux, Secretary-Treasurer of Local 969 and the remaining Union representative on the Joint Area Grievance Committee. Comeaux stated that he had a clear recollection of the case. In his opinion, the accident was preventable because Giauque was going too fast as he approached the intersection to make the turn. Mr. Comeaux believes that Giauque caused the accident by failing to reduce his speed. To support his opinion, Mr. Comeaux stated that many tanker trucks going in and out of the St. Gabriel terminal make the same turn that Giauque made on April 24, 1991. Comeaux further stated that he had driven a truck himself for many years and that, based on his considered experience, the facts did not support Giauque's claim that the steering wheel locked. Comeaux stated that the accident was very costly for the company. Finally, Comeaux stated that he had no prior knowledge of Mr. Giauque's political activities and that he did not hear anyone else speak of Mr. Giauque's political activities before, during or after the Joint Area Grievance Committee hearing.

In support of his allegation that the three Union representatives discriminated against him in voting to uphold the company's decision regarding discharge, Mr. Giauque relies on two affidavits submitted on his behalf from James Graef and John McClain both of whom are members of Local 988 in Houston, Texas and both of whom

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are employed by Chemical Leaman Tank Lines. In his affidavit, Mr. Graef states that on or about November 19, 1989, he was assaulted by Bill Sowell, business agent from Local 988, while he was attempting to distribute TDU material. Mr. Graef states that Mr. Sowell grabbed his right arm and physically threatened him and admonished him not to cause any more trouble.

Mr. McClain's affidavit states that, in his role as an activist member of TDU, he has been singled out as a radical and a troublemaker. Mr. McClain states that Richard Hammond, President of Local 988, has attempted to disgrace his name at a Union meeting. McClain further states that between January and May of 1991, he personally observed Mr. Sowell wearing a pin which read, "TDU sucks!." McClain further states that anti-TDU literature is posted on the bulletin boards in Local 988's Union hall.

In order to prevail in his claim that the Union representative on the Joint Area Committee breached their duty of fair representation, Mr. Giaque must demonstrate that the Joint Area grievance members relied upon "political, religious, racial, ethnic, personal or otherwise impermissible factors when ruling upon a grievance petition." Thomas v. UPS, 890 F.2d. 909, 921 (7th Cir., 1989); In Re: Braxton, 91-Elec. App.-147 (SA). In other words, Mr. Giaque must show that the union representative's conduct was intentional, invidious, and directed at the employee. See Thomas v. UPS, *supra*, at 922.

Mr. Giaque has failed to meet his burden of proof concerning his allegation of improper motive. The investigation disclosed that all three Union representatives believed that the accident was caused by the fact that Mr. Giaque was driving too fast as he approached the turn. All three Union representatives also stated that there was no evidence to support Giaque's claims that the steering wheel locked as he entered the turn. Further, even assuming that the steering wheel locked, all three Union representatives stated that the vehicle should not have turned over unless it was being operated at too high a rate of speed.

Most importantly, the evidence fails to establish that any of the IBT Joint Area Grievance Committee members had any prior knowledge of Giaque or were aware of his political activities. At no time did any member of the Committee discuss the fact that Giaque was a TDU supporter, a TDU alternate delegate candidate and/or a supporter of Ron Carey's campaign for IBT General President. Assuming *arguendo* that Mr. Sowell harbors strong anti-TDU sentiments, Mr. Giaque has submitted no evidence to prove that Mr. Sowell was aware of Mr. Giaque's political support for TDU. Additionally, there is simply no evidence to suggest that the two other Union representatives on the panel harbored any anti-TDU sentiments. Thus, even if Mr. Sowell's vote was not counted, Mr. Mr. Giaque's grievance would still have been denied by a majority of the Joint Area Committee. Therefore, even if the Election

Officer were to conclude that Mr. Sowell discriminated against Mr. Giaque in violation of the *Rules*, it is clear that such a violation could not have "undermined the integrity of the arbitration process". In Re: Braxton, *supra* at page 11. Accordingly, since there is no evidence to support Mr. Giaque's claim with respect to the allegations set forth above, the protest concerning employer discrimination on the part of the Union representatives serving on Joint Grievance Committee is DENIED.

IV. Allegations that Local 270 Business Agent Failed to Fairly and Vigorously Represent Giaque Before the Joint Area Grievance Committee.

Mr. Giaque also alleges that Bob Louis, the business agent appointed by Local 270 to represent him, failed to properly do so before the Joint Area Grievance Committee due to his animosity towards Giaque's political views and activities. Mr. Giaque alleges that Mr. Louis did not vigorously pursue the grievance. Mr. Giaque also states that he knew "Bob Louis would not do a good job for him because Bob Louis was anti-TDU."

As proof that Mr. Louis' bias prevented him from fairly representing Giaque, Giaque refers to anti-TDU statements made by Robert Louis at a Local 270 contract proposal meeting, as well as statements uttered by Mr. Louis during a recent conversation between himself and Mr. Giaque. Giaque claims that during the meeting and conversation, Louis made negative references to TDU saying, "All this TDU bullshit and petitions going around don't amount to shit" and "Hey, Mr. TDU, you're fucked up. You've been in the Union five years and you think you know everything."

Mr. Giaque claims that Mr. Louis did almost nothing to prepare for his hearing before the Joint Area Committee. In particular, Mr. Giaque accuses Mr. Louis of failing to obtain critical documents necessary to his grievance case. Giaque further alleges that all the evidence which was submitted at the hearing was obtained solely through his efforts and that except for inspecting the accident scene, Mr. Louis made no meaningful contribution to the preparation of his case. An investigation was conducted into Mr. Giaque's allegations.

The investigation disclosed that on May 23, 1991, Mr. Louis and Mr. Giaque met with company representatives to review and discuss the company's termination decision. During the meeting, Mr. Louis attempted without success to convince Mr. Jowers to reverse the company's decision. Prior to the meeting, Mr. Louis had contacted company representatives requesting copies of the Vehicle Compliance Reports (VCRs) on Tractor #2428, which was the tractor that Mr. Giaque was driving at the

time of the accident.¹ The company provided copies of the VCRs on Tractor #2428 during the May 23, 1991 meeting. During the meeting Mr. Jowers also presented the Union with photographs of the accident scene, a copy of the report prepared by Mack Truck in which Mack Truck concluded that there was no evidence of any mechanical or structural problem with the steering wheel, and an accounting of the damages. Mr. Louis asked several questions about the report.

On May 28, 1991, Mr. Louis investigated the accident site in Shreveport with Mr. Giaque and Mr. Jowers, the terminal manager. Mr. Louis remained on the scene for approximately one hour and asked Mr. Giaque and Mr. Jowers several questions about the vehicle and the accident.

Sometime during the last week in May, Mr. Giaque contacted Mr. Louis and asked him to obtain VCR reports for all R-model trucks dating back to the first of the year. On June 6, 1991, Mr. Louis sent a letter to the company formally requesting copies of all the VCR's for the R-model trucks. According to Mr. Louis, such a request encompasses approximately 1100 reports. The company advised Mr. Louis that it would furnish information on Tractor #2428, the cab Giaque was driving at the time of the accident, but that information on other equipment would not be furnished because it was not relevant to Mr. Giaque's case.

When Mr. Louis received the copies of the VCRs on Tractor #2428, he reviewed them with Mr. Giaque and they did not discover any references to any steering wheel problems in any of the reports. Mr. Louis states that he is not aware of any structural or generalized mechanical problems with the Mack R-model steering columns. Mr. Louis also states that he was not surprised that the company refused to supply the requested documents given the voluminous nature of the request.

Mr. Giaque also asked Mr. Louis to obtain copies of the tractor's registration, copies of cost of damages for accidents involving four other drivers, and a copy of the written report filed by the Mack Truck representative responsible for inspecting the tractor trailer after the accident from the company. In a written statement submitted by Mr. Giaque in reference to this protest, Mr. Giaque states that, "All of these items were produced except for the VCR reports I requested on all R-Model trucks dating back to the first of the year."

On July 1, 1991, Mr. Giaque called Mr. Louis to advise him that he had obtained a copy of a lawsuit that had been filed by a number of Chemical Leasing drivers alleging steering defects on similar Mack vehicles. After receiving Mr.

¹A vehicle compliance report is a report filed by a driver of a particular vehicle whenever the driver observes or experiences mechanical difficulty with the vehicle.

Giaque's call, Mr. Louis contacted the company to schedule a meeting to discuss the case.

On July 5, 1991, Mr. Giaque and Mr. Louis met with company representatives to further discuss Mr. Giaque's grievance. During that meeting, Giaque advised Mr. Louis and the company that he had obtained information concerning a lawsuit that had been filed by a group of drivers against Mack Truck, the manufacturer of the truck. Mr. Louis submitted a copy of the case to the company. The company maintained that the case was not relevant. The company further stated that based on the police report and mechanic's report, there was no evidence to support Mr. Giaque's allegation that defective steering caused the evidence.

On the day of the hearing, Mr. Giaque advised Mr. Louis that he had obtained a copy of a case which he claimed stood for the proposition that he was entitled to copies of all the previously requested VCR reports for of the R-model vehicles.² Before the hearing started, Mr. Louis informed the company that he wished to submit the case as part of his defense. The company objected to the submission of the case because of the lack of adequate notice. However, the company representatives told Mr. Giaque that notwithstanding the fact that the company was not obligated to provide the VCR reports, Mr. Louis and Mr. Giaque could come to the terminal and examine all the requested VCR reports in person. The company stated that it would consent to a delay in the hearing for the purpose of giving the Union an opportunity to inspect the reports, but that Mr. Giaque would have to agree to forego any potential back pay award for any additional period of time caused by the postponement of the hearing. Mr. Giaque discussed the matter with Mr. Louis and decided to proceed with the hearing even though that he had not reviewed all of the requested VCR reports. Despite the company's objection, the Committee permitted Mr. Giaque to submit and discuss both the lawsuit against Mack Truck and the Second Circuit decision during the hearing.

Mr. Giaque states that he wanted to present his own case before the Committee to insure that he was adequately represented. At the hearing, Mr. Louis introduced Mr. Giaque and stated that he had worked with him for several years, and that he was a good employee and a well-respected friend, and that in his opinion, there was no evidence to disprove Mr. Giaque's claim that the steering wheel had locked. Mr. Louis further argued that, based on his investigation, Mr. Giaque could not have been traveling more than five miles an hour as he approached the turn.

After Mr. Louis spoke, Mr. Giaque presented his case to the Committee. Mr. Giaque argued that the steering problem contributed to the accident. He submitted a

²The case to which Mr. Giaque referred was NLRB v. New York Telephone Company, 137 LRRM 2123 (2nd Cir., 1991).

copy of the complaint filed in the New Jersey case as evidence of the defective steering. Mr. Giaque stated that he was not traveling too fast and that the steering wheel locked as he turned it to the left. Mr. Giaque also argued that the report submitted by Mack Truck was inconclusive. He also referred to the police report which showed that there was no evidence that drugs or alcohol played any part in the accident.

Mr. Giaque also contended that the company was obligated to provide him with copies of all VCR reports on all R-Model trucks. To support his claim, Mr. Giaque distributed copies of the Second Circuit's decision in NLRB v. NY Telephone, 137 LRRM 2123 (2nd Cir., 1991). After Mr. Giaque was finished with his remarks, Mr. Louis summed up the facts and reiterated the Union's position that the cause of the accident was not due to Mr. Giaque's negligence and that Mr. Giaque's work and driving record was good and that he should be reinstated.

As previously stated, Article VIII, § 10 of the *Rules* provides that IBT members retain the right to participate in political activities. This includes the right to be free from discrimination based on political animus by the IBT, or its subordinate bodies, and IBT or subordinate body officers or agents, in the processing of grievances. This right is analogous to duty of fair representation right established by the Supreme Court in Vaca v. Sipes, 386 U.S. 171 (1967), where the Court held that, "a union may not arbitrarily ignore a meritorious grievance or process it in a perfunctory fashion," *Id.* at 190. In a recent case interpreting Vaca v. Sipes, the Fourth Circuit Court of Appeals held that "severely deficient union conduct" is required for a breach of the duty of fair representation: Ash v. United Parcel Service, 800 F.2d 409 (4th Cir., 1986). In Whiteen v. Anchor Motor Freight, 521 F.2d 1335 (6th Cir., 1975), cert denied 425 U.S. 981 (1976), the Sixth Circuit held that in order to establish a breach of the duty of fair representation, the employee must show that the "union's action or inaction was motivated by bad faith," and that "conclusory allegations of discrimination are insufficient if an action against the union for breach of its duty of fair representation is to be maintained." Whiteen v. Anchor Motors, *supra* at 1336.

Applying the standard enunciated by the federal courts in fair representation cases, the investigation did not disclose sufficient facts to support Mr. Giaque's allegation that Mr. Louis discriminated against him in his representation of him before the Joint Area Committee. The facts establish that Mr. Louis met with company representatives on three occasions prior to the hearing in an attempt to convince the company to reverse its decision. Mr. Louis also visited the accident scene, and reviewed the police, mechanic's and VCR reports submitted by the company as well as the cases submitted by Mr. Giaque.

After the company notified Mr. Louis to inform him that it would not provide the VCR reports, Mr. Louis called Mr. Jowers to ask the company to reconsider its

position. When Mr. Giauque advised Mr. Louis that he had found a case alleging steering defects in similar vehicle models, Mr. Louis called the company and scheduled an additional meeting. Mr. Giauque himself admitted that except for the VCR reports, Mr. Louis was able to obtain all the information he had requested. The investigation disclosed that Chemical Leaman Tank Lines routinely refuses to provide copies of the Vehicle Compliance Reports from models of vehicles not involved in particular accidents. The investigation also disclosed that Mr. Louis diligently attempted to obtain copies of the reports. Finally, Mr. Giauque could have chosen not to proceed with the hearing until he had received copies of the reports.

The evidence also shows that Mr. Giauque chose to represent himself because he thought he could do a better job because he feared that Mr. Louis' anti-TDU sentiments would undermine Mr. Louis' representation of him. Mr. Giauque offers no proof that such would have been the case. Rather, the investigation revealed that Mr. Louis actively pursued the grievance from the outset, and Mr. Giauque has no facts to support his allegation of unfair representation other than Mr. Louis' alleged anti-TDU sentiments. Finally, the evidence shows that Mr. Giauque had planned and was prepared to present his case to the Joint Area Committee and had the opportunity to do so. All of the witnesses interviewed by Mr. Williams stated that at the conclusion of the hearing, Mr. Giauque stated that he was satisfied with his representation and thought that he had been fully and fairly represented.

There is no evidence to support Mr. Giauque's allegations that Mr. Louis discriminated against him because of his political activities. The facts also establish that Mr. Louis' pursuit of the grievance was not deficient. The fact of Mr. Louis' anti-TDU sentiments does not support Mr. Giauque's conclusion that Mr. Louis did not fairly represent him before the Joint Area Grievance Committee. Accordingly, Mr. Giauque's protest with respect to this issue is DENIED.

V. Conclusion.

In accordance with the decisions as set forth above, the Election Officer DENIES Mr. Giauque's protest 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,

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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,


Michael H. Holland

MHH/mjv

cc: Frederick B. Lacey, Independent Administrator

Donald H. Williams, Regional Coordinator

Susan Jennik, Esq.
Association for Union Democracy
500 State St.
Brooklyn, NY 11217