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October 28, 1991

VIA UPS OVERNIGHT

T. K. Johnson
1124 W. Walnut
El Reno, OK 73036

Fleming Foods
10 E. Memorial Rd.
Oklahoma City, OK 73114

Charlie Thompson, President
Jean Paul Fisher
Richard Nelson
Neil Snow
c/o IBT Local Union 886
3528 W. Reno
Oklahoma City, OK 73125

Homeland
Attn: Labor Relations Dept.
400 NE 36th St.
Oklahoma City, OK 73105

Consolidated Freightways
Attn: Mr. Elrick, Terminal Manager
1400 SE Skyline Road
Oklahoma City, OK 73029

Re: Election Office Case No. P-977-LU886-SOU

Gentlemen:

A protest was filed pursuant to *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by T. K. Johnson, a member of Local 886 and a supporter of the International Union officer candidates on the Ron Carey Slate. Mr. Johnson alleges in his protest that officers of Local 886 used Union resources for the purpose of campaigning and improperly removed campaign literature from a bulletin board in violation of the *Rules*.

Specifically, the protest alleges three separate incidents, each of which the protestor contends is a violation of the rules. First, Mr. Johnson alleges that Local 886 Union officials Charlie Thompson, President; Jean Paul Fisher, Vice President; Richard Nelson, Secretary-Treasurer; and Neil Snow, Assistant Business Agent, escorted R. V. Durham on a company visit to Homeland and Fleming Foods while on Union work time. Further, the protest alleges that on October 9, 1991, Mr. Fisher was present at Consolidated Freightways, an employer of IBT members, and while in the break room, and on Union-paid work time, removed Ron Carey campaign literature from the break room bulletin board and placed campaign literature for R. V. Durham on tables in the break room. Finally, the protest alleges that on October 5, 1991, after the conclusion

of a regular monthly Union meeting held at the Local Union Hall, Mr. Thompson made an announcement that R. V. Durham would be present in town on October 9, 1991 for a campaign reception and requested that all members present attend the meeting. The protest was investigated by Adjunct Regional Coordinator Frances Cusack.

The respondents to this protest object that the protest is untimely since it concerns events which occurred on October 5, 9 and 10, 1991 but was not filed until October 12, 1991. Mr. Johnson is employed as an over-the-road driver, which results in his absence from home for multi-day periods. He was not present at the October 5, 1991 meeting and first became aware of the events of that meeting and the activities of October 9 and 10, 1991 on October 11, 1991 when meeting with other Local 880 members. The protest was filed on October 12, 1991, within 48 hours of the alleged October 10, 1991 violation and only a week after the date of the earliest October 5, 1991 allegation. The protest is timely. See Election Office Case No. P-822-IBT, affirmed 91-Elec.App.-198.

Regarding the allegation that Union officials campaigned on Union-paid work time on October 9 and 10, 1991, the investigation revealed that each of the Local Union officials named in the protest did accompany R. V. Durham to Homeland, an employer of IBT members, on October 10, 1991. With the exception of Neal Snow, who took an unpaid leave of absence, each of the officials named in the protest was on vacation on October 10, 1991.¹ No Union-owned automobiles were used. Mr. Fisher rented a car, the cost of which he personally paid. Everyone else used their personal vehicles.

All of the officials denied campaigning at Fleming Foods. T. K. Johnson, the protestor, after filing the protest, advised the Election Officer that he made an error when he alleged that Local 886 officers and business agents had accompanied Mr. Durham to Fleming Foods.

Article VIII, § 10(b) of the *Rules* provides that all Union officers and employees retain the right to participate in campaign activities as long as campaigning does not involve the expenditure of Union funds. The *Rules* specifically provide that campaigning during paid vacation or other time that is not paid for by the Union, such as unpaid leaves, is not violative of the *Rules*. The Election Officer concludes that the officials of Local 886 did not violate the *Rules* by campaigning on either vacation or unpaid time. Nor was there any evidence that the officials used any other Union resource, such as Union cars, to provide transportation or to otherwise facilitate their campaign activities.

¹ The records of the Local verify that Mr. Snow's salary for the week was reduced and that all other officers or business agents were on vacation.

The next allegation of the protest concerns the conduct of Mr. Fisher, Vice President of the Local, at the premises of Consolidated Freightways on October 9, 1991. John Lineberger, a member of Local 886 and an employee of Consolidated, observed Mr. Fisher, at approximately 10:00 a.m. on Wednesday, October 9, in the break room of Consolidated Freightways. Lineberger was sitting on his fork lift truck outside the office, but could see Mr. Fisher through the break room window. Mr. Fisher removed tacks from the bulletin board; the materials posted by such tacks fell to the floor. Prior to leaving the break room, Mr. Fisher deposited material on the break room table.

Mr. Lineberger then entered the break room. Campaign literature promoting nominated General President candidate Ron Carey and nominated Vice President candidates T. C. Stone and W. C. (Willie) Smith was lying on the floor near the bulletin board. The literature Mr. Fisher placed on the table concerned a rally for R. V. Durham.

Mr. Fisher agrees that he was present at Consolidated on October 9, 1991. The purpose of his visit was to verify the posting of the Notice of Election of International Officers. When he inspected the bulletin board in the break room, the Notice of Election was partially covered by other material. His removal of the tack was for the purpose of removing the material obstructing the Notice of Election. He admits that he did not repost the material so removed. Mr. Fisher contends that the only material removed was a notice of a campaign meeting for Messrs. Stone and Smith which had taken place prior to October 9, 1991. He denies that he removed any Ron Carey campaign literature.

Mr. Fisher further agrees that he placed copies of an invitation to meet R. V. Durham on the break room table. Mr. Fisher states that he is not certain of the time of his visit but he did have a conversation with Mr. Lineberger on that date on the dock and also spoke with one or two other employees on the dock.

Based upon the investigation and the statements of Mr. Lineberger and Mr. Fisher, the Election Officer concludes that Mr. Fisher was on official Union business when he visited Consolidated on October 9, 1991. The Election Officer has directed all Local Unions to post the Notice of Election on worksite bulletin boards and to monitor such posting. Accordingly, Mr. Fisher placing campaign materials on the table in the break room was incidental to regular Union business. His actions did not violate of the *Rules*. See *Rules*, Article VIII, § 10(b).

However, the Election Officer finds that Mr. Fisher improperly removed campaign materials from the bulletin board. The *Rules* safeguard the rights of all candidates to freely and fully exercise their rights to campaign. Article VIII, § 10(d) expressly prohibits any restriction on candidates or members' pre-existing rights "to use employer or Union bulletin boards for campaign publicity." It is a violation of the

Rules for anyone - any Union officer, agent or member or any company official - to remove properly posted campaign literature.

While the Election Officer agrees that material covering official Union notices, and particularly the Notice of Election, is improper, the appropriate remedy is to reposition the offending campaign literature. Removing the literature or permitting it to fall from the bulletin board to a spot where it is likely to be discarded is improper. Mr. Fisher and all other Local Union officers, business agents, stewards and members are directed to refrain from removing or permitting the removal of any campaign literature - other than clearly outdated materials - posted by any other Union member.

As to the final allegation in the protest, there is no serious dispute as to the facts. A regular monthly membership meeting was held by Local 886 on October 5, 1991. At the conclusion of this meeting Mr. Thompson, who chaired the meeting, stated that he had a personal announcement to make after the meeting was adjourned. Those members who wished to hear the announcement were directed to remain while other members were told they could leave. After that statement, a motion was made to adjourn the meeting which was properly seconded and passed. A few moments thereafter, Mr. Thompson, from his position at the podium, announced that R. V. Durham and Jerry Cook, both candidates for International officer positions, would be in Oklahoma City on Thursday, October 10, 1991. Mr. Thompson announced that a reception would be held for them that night. He invited all members present to attend the reception.

Article VIII, § 10(b) of the *Rules* provides that all Union officers retain the right to participate in campaign activities, including the right to openly support or oppose any candidate and to aid in the campaign for any candidate. However, such campaigning cannot involve the expenditure of Union funds nor can IBT entities, including a Local Union as an entity, endorse or support a particular candidate or slate of candidates. (See Election Office Case No. P-963-LU677-ENG, on appeal).

The announcement made by Mr. Thompson concerning the Durham-Cook visit and reception was campaign activity. Although the announcement was made after the meeting officially adjourned, notice that there would be such an announcement was given prior to adjournment. Further, Mr. Thompson made his announcement from the podium.

The gravamen of the *Rules* is equal treatment for all candidates. The conduct and content of Local Union meetings must either be politically neutral or permit all members to have an equal opportunity to express their political view. *Rules*, Article VIII, § 4.

With these principles in mind, the Election Officer directs that at the November and December Local Union meetings, Mr. Thompson, if requested by any member, shall make an announcement immediately prior to the adjournment of the meeting that

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there will be a personal message or messages made after the meeting, naming the member(s) who will present the messages. After the meeting is adjourned, such member(s) may then make an announcement from the podium of no more than three minutes in duration regarding the candidate or slate of candidates he/she supports. If more than one member requests this privilege, lots shall be drawn to determine the order of the announcements. An appeal of this decision shall not stay, the effectiveness of this requirement. *Rules*, Article XI, § 2(2).

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/ca

cc: Frederick B. Lacey, Independent Administrator

Larry R. Daves, Regional Coordinator

Ron Carey
c/o Richard Gilberg, Esquire
Cohen, Weiss & Simon
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