



OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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Washington, DC 20001

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Election Officer

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December 2, 1991

VIA UPS OVERNIGHT

Jeff Witherill
17605 Enadia Way
Van Nuys, CA 91406

Carl Lindeman
Secretary-Treasurer
IBT Local Union 396
3435 Wilshire Blvd.
Suite 2320
Los Angeles, CA 90010

United Parcel Service
16000 Arminta Street
Van Nuys, CA 91406

Re: Election Office Case No. P-1120-LU396-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*") on behalf of Jeff Witherill, a member of Local Union 396. Mr. Witherill, employed by United Parcel Service ("UPS") as a package car driver at its Van Nuys, California facility, protests that he has been instructed by UPS personnel to remove his Ron Carey button from his UPS uniform even during the period that he remains within the Van Nuys terminal prior to leaving the property to commence his work as a package car driver.

The protest was investigated by Regional Coordinator Geraldine Leshin. It is undisputed that IBT members employed by UPS at its Van Nuys facility have not been permitted to wear intra-Union campaign buttons in the past.¹ UPS maintains that it has long had a strict uniform dress and grooming code for UPS employees who wear UPS uniforms and come in contact with the public.

¹ Witnesses to whom the Election Officer was referred all stated that they had been told to remove Ron Carey buttons from their uniform by UPS supervisory personnel and have not been permitted to have such buttons on their uniforms even prior to the time that they left the terminal on their assigned job duties.

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The UPS-IBT collective bargaining agreement provides in Article VI that UPS has the right to establish and maintain standards concerning the wearing of uniforms and accessories. Other than a small badge identifying stewards or designated alternates, which Article IV of the UPS-IBT collective bargaining contract requires UPS to permit its employees to wear, the dress code promulgated and enforced by UPS includes a prohibition against employees in uniform wearing any other buttons. UPS policy has been upheld by the National Labor Relations Board, as well as in various arbitration decisions. See, e.g., United Parcel Service, Inc., 195 NLRB 441 (1972); United Parcel Service of New York, Inc., 7 L.A. 395 (Feinberg, 1947).

Mr. Witherill, however, relying on Article VIII, § 10(d) of the *Rules* and the decision in In Re: Veneziano, Jr., 91-Elec. App.-62, affirming Election Office Case No. P-309-LU671-ENG, contends that he should be permitted to wear a campaign button prior to the time he leaves the UPS terminal to commence his job assignment, prior to the time when he will have contact with members of the public, whether or not in uniform prior to that time. Mr. Witherill's reliance is misplaced.

In Re: Veneziano, Jr., *supra*, involves circumstances peculiar to the New England region of UPS. In New England -- unlike any other area of UPS operations of which the Election Officer has knowledge -- UPS permits IBT members employed by it to wear their uniforms to and from work. Accordingly, UPS permits such members, as it must pursuant to substantive federal law, to wear buttons including campaign buttons on their uniforms when coming to or departing from work. Under such circumstances, the Election Officer found that it violated Article VIII, § 10(d) of the *Rules* for UPS to require such members to remove their buttons when they arrived at work, during the interval that they remained in the terminal facility and prior to leaving the terminal facility to commence their job assignment.

On the other hand, Mr. Witherill, like most UPS employees outside of the New England region, does not wear his UPS uniform to or from work. While he may wear a portion of the uniform, such as the uniform shirt, when coming to or departing from work, he only dons the full uniform after arrival at the terminal facility.

These circumstances make Mr. Witherill's situation more closely analogous to the protest determined by the Election Officer in Election Office Case No. P-779-LU41-MOI. There, the Election Officer found that UPS did not violate the *Rules* by prohibiting IBT members at its Kansas City facility from wearing campaign buttons on their uniforms including the period that such members were inside the terminal facility when they would have no contact with members of the public.²

² In Election Officer Case No. P-779-LU41-MOI, as in the instant protest, the Election Officer investigation determined that UPS not only permitted but indeed encouraged IBT members employed by it to wear small, 7/8" x 1" in circumference buttons supporting American troops involved in Desert Storm. The Election Officer found that the fact that UPS permitted and even encouraged the wearing of Desert Storm

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The Election Officer concludes that Article VIII, § 10(d) of the *Rules* does not prohibit UPS from restricting IBT members employed by it from wearing campaign buttons at any time during which such members are wearing their UPS uniforms. With respect to a particular facility where UPS has permitted IBT members to wear campaign buttons on their uniforms -- such as the situation in *In Re: Veneziano, Jr., supra* -- UPS may be prohibited from restricting its employees from wearing such buttons after the commencement of the work day but prior to the time that such employees may reasonably expect to be in contact with the public; however, no such practice was established at the Van Nuys, California facility where Mr. Witherill works. For these reasons, and under the circumstances of this case, the protest is DENIED.

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

cc: Frederick B. Lacey, Independent Administrator

Geraldine L. Leshin, Regional Coordinator

Martin Wald, Esq.
Schnader, Harrison, Segal & Lewis

Karen Anita Keys, Esquire
Teamsters for a Democratic Union
2000 P St., N.W., Suite 702
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pins did not create a right of IBT members to wear more conspicuous campaign buttons.

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Ron Carey
c/o Richard Gilberg, Esquire

R. V. Durham
c/o Hugh J. Beins, Esquire

Walter Shea
c/o Robert Baptiste, Esquire