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Election Officer

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January 28, 1991

VIA UPS OVERNIGHT

Andrew J. Puglise, Jr.
286 High St.
Cumberland, RI 02864

Paul G. Hanoian
Secretary-Treasurer
IBT Local Union 64
76 Dorrance Street, Suite 500
Providence, RI 02903

Re: Election Office Case No. P-278-LU64-ENG

Gentlemen:

A pre-election protest was timely filed pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*"). In his protest, Andrew J. Puglise, Jr. alleges that he was laid off on December 14, 1990 by his employer, Tourtellot and Company, Inc. because he is a candidate for delegate to the 1991 IBT International Convention.

The investigation shows the following: Mr. Puglise was hired in August of 1990 as a driver for Tourtellot warehouses driving straight trucks; he was laid off on December 14, 1990 by the warehouse supervisor, Alex Di Martin. Mr. Di Martin told Mr. Puglise that he was being laid off because things were slow, and the employer had no work for him. Mr. Puglise states that Mr. Di Martin also said to him at the time of the layoff, "I hope you beat the SOB, but you're laid off." Mr. Puglise believes that the reason given by the employer for the lay-off was pretextual because the employer subsequently hired two additional drivers.

The employer told the Election Officer that Mr. Puglise's route with the straight truck was always a supplemental service. The employer informed the Election Officer Representative that the delivery work was slow in December and could be handled by semi-trucks without use of the supplemental service, i e , straight trucks. Further, because Mr. Puglise only held a Class 2 Driver's license, he could legally drive a straight truck, but not a semi-truck. The employer had encouraged Mr. Puglise to obtain a Class 3 License on several occasions, but Mr. Puglise failed to do so. The two drivers who were hired subsequent to Mr. Puglise's lay-off have Class 3 licenses. The employer also told the Elections Officer Representative that deliveries may well pick up in the Spring, and they will again supplement the semi-trailer truck deliveries with straight truck loads. In that case, Mr. Puglise will be recalled to his job.

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There is no evidence, independent of the lay-off itself, of Employer hostility to Mr. Puglise's campaign activities for IBT Delegate. There is no evidence that the Local Union was involved in the decision to lay off Mr. Puglise. There is no evidence that the seniority clause of the collective bargaining agreement was violated when the lay-off occurred. The fact that the employer consolidated routes and made deliveries with semi-trailer trucks, rather than straight trucks indicate that the lay-off was motivated by a legitimate business justification. The Election Officer concludes that the fact that Mr. Puglise's license does not allow him to operate the semi-truck, the type of vehicle to which the employer transferred all route work. Therefore, the *Rules* have not been violated and 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 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,


Michael H. Holland

MHH/mca

cc Mr. Frederick B. Lacey, Independent Administrator
Ms. Elizabeth A. Rodgers, Regional Coordinator