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January 24, 1991

VIA UPS OVERNIGHT

Mark E. Franks
5851-11 Reddman Road
Charlotte, NC 28212-3624

Ralph Durham, Jr.
IBT Local Union 71
5000 North Tryon St.
Charlotte, NC 28256

Conrad D. Sides
President
IBT Local Union 71
5000 North Tryon St
Charlotte, NC 28256

Re: Election Office Case No. P-279-LU71-MID

Gentlemen:

A pre-election protest has been timely filed pursuant to Article XI *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") In his protest, Mr Mark Franks alleges that Mr. Ralph Durham, Jr. has engaged in election campaign activity during work time in violation of the *Rules*.

The investigation shows the following: Mr. Franks is employed at the UPS facility in Charlotte, North Carolina. Mr. Durham is the Local business agent responsible for servicing the facility He is also a candidate for delegate to the 1991 IBT International Convention.

On January 11, 1991 from 6:00 - 8:00 p.m. Mr. Durham and another business agent, Mr. Larry Miller, made a site visit to the UPS facility. Mr. Franks believes that the visit was made primarily for campaign purposes. Mr. Durham states, however, that the purpose of the site visit during the evening hours was to see if supervisors were performing bargaining unit work in violation of the collective bargaining agreement and if the members were required to do their "paperwork" while off the clock, i.e. without being paid.

During the visit, Mr. Durham approached Mr. Franks while he was "on the clock", i.e. during work time, and offered to shake his hand. Mr. Franks refused the handshake explaining that he was "on the clock." Mr. Franks and Mr. Durham then exchanged some heated words and Mr. Durham left the area.

There is no other evidence of campaign activities by Mr. Durham on January 11, 1991. Mr. Durham states that he has campaigned on other occasions but during his non-work time and in the parking lot and otherwise outside the facility building.

The *Rules* prohibit campaigning on working time: Specifically, members, officers and employees of a union may not campaign on time that is paid for by the union. Further, union members are prohibited from engaging in campaign activities on time paid by their employer. Campaigning, however, that is incidental to work, for non-office members, or regular union business for officers and union employees, does not violate the *Rules*, Article XVII, §10 (a) and (b).

The Election officer concludes in this case that the only evidence of Mr. Durham's alleged campaign activity at UPS is activity that was brief in duration and merely incidental to his work site visit which was properly union business since its purpose was to monitor adherence to the terms of the collective bargaining agreement. If Mr. Frank had shaken Mr. Durham's hand, that activity also would have been incidental to Mr. Frank's work. Furthermore, the brief exchange of insults between Mr. Durham and Mr. Franks is, generally speaking, non an unusual occurrence in a heated campaign and does not violate the *Rules*.

Based on the foregoing 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

Mark Franks
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for a hearing.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael H. Holland". The signature is written in a cursive style with a large initial "M".

Michael H. Holland

MHH/acm

cc: Frederick B. Lacey, Independent Administrator