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Election Officer

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March 15, 1991

VIA UPS OVERNIGHT

Mark J Moran
2229 Central Avenue
Alameda, CA 94501

Al Costa
Secretary-Treasurer
IBT Local Union 853
8055 Collins Dr
Oakland, CA 94621

Dennis Bist
c/o Local Union 853
8055 Collins Dr
Oakland, CA 94621

Re: Election Office Case No. P-575-LU853-CSF

Gentlemen

This pre-election protest was filed by Mark J Moran pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") Moran alleges that on Tuesday, February 19, 1991, at approximately 9 00 - 9 30 a m , Dennis Bist, Business Agent for Local 853, came to the Price Club, where Moran works and spent half an hour distributing campaign literature to Local 853 members during such members' work time Moran also contends that Bist removed Moran's posted campaign literature and deposited slanderous material in the breakroom at the Price Club Moran contends that Bist thus engaged in campaigning on time paid for by the Union and used Union resources to produce slanderous campaign material

The protest was investigated by Adjunct Coordinator Nancy Lonsdale Mr Bist admitted being at Price Club on Tuesday, February 19, 1991 at the time alleged by Moran He normally visits all work-sites employing Local 853 members for whom he has responsibility, including Price Club On February 19, he visited the warehouse in accordance with his regular practice, to talk about their work-related problems or grievances

Bobette Younger, a Local member, spoke to him about her pending grievance Ms Younger then spoke to him about the delegate and alternate delegate election and asked if he had any campaign literature Mr Bist gave Ms Younger literature, which Mr Bist contends he obtained at another work-site he had visited in the course of his

Mark J Moran
Page 2

normal duties as business agent for Local 843 Mr Bist told Ms Younger that she could put the literature, if she so desired, in the breakroom, which she apparently did. The literature given by Mr Bist to Ms Younger was entitled "Convoy Extra #2" and contained derogatory remarks about five delegate candidates seeking election in five different Locals in Northern California, including Rudy Hernandez who is seeking election as a 1991 IBT International Convention delegate from Local 853

Mr Bist states that the entire conversation with Ms Younger lasted no longer than a few minutes. Mr Bist states that he spoke to no other members at Price Club about the election. He denies removing any posted campaign materials.

Mr Moran was unable to produce any further evidence as to Mr Bist's campaigning on Union time and the Election Officer investigation was unable to uncover any. Thus the Election Officer concludes that Mr Bist's campaigning was incidental to his regular Union business and not violative of the *Rules* *Rules*, Article VIII, Section 10(b).

With respect to the campaign literature admittedly given by Mr Bist to Ms Younger and later deposited by her in the breakroom at Price Club, the Election Officer has consistently ruled that he will not be involved in the censoring of campaign material, literature, statements or assertions based on their alleged truth or falseness. The fact that the campaign literature allegedly contains false, irrelevant or even defamatory information does not remove it from the protection of the *Rules* National Association of Letter Carriers v. Austin, 418 U S 264 (1974) (uninhibited and robust debate encouraged in labor matters, even allegedly defamatory statements permitted), Salzhandler v Caputo, 316 F 2d 445 (2nd Cir 1963) (statements critical of Union officials, even if incorrect, protected). The policy encouraging robust political debate in the selection of delegates and International Officers of the IBT is reflected in the *Rules'* prohibition against censorship of campaign literature. See Article VII, § 6 (g).

Mr Moran alleges, however, that in addition to the literature Mr Bist admitted giving to Ms Younger, Mr Bist also produced and/or distributed campaign literature which literature on its face purports to be an official Union publication. The second document was created by taking an authorized edition of the Union publication entitled "Northern California Teamster" and substituting the headline "Rudy Hernandez Defeated as Shop Steward at Safeway Spice" for the headline that appeared in the official publication. The document on its face appears to be an official Union publication suggesting an official Union position with respect to the candidacy for 1991 IBT International Union Convention delegate of Local 853 member Rudy Hernandez. The publication and distribution of such literature is thus violative of the *Rules*. See e.g. Article X, Section 1(a)(3) and Article VIII, Section 7.

Mr Bist denied, however, that he produced or distributed such literature. Mr Moran was unable to produce any evidence as to the identity of the person who prepared, printed or distributed the literature and the Election Officer investigation was unable to determine by whom or how the material was prepared, printed and distributed.

Mark J Moran
Page 3

Accordingly, the Election Officer is unable to sustain this portion of the protest, but notes that the preparation and distribution of this literature is in fact, violative of the *Rules* and the Election Officer would and will take appropriate sanctions against any IBT member involved in its duplication or distribution

For the foregoing reasons, this protest is DENIED 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, 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/ads

cc Frederick B Lacey, Independent Administrator
Donald E Twohey, Regional Coordinator