



OFFICE OF THE ELECTION OFFICER
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October 18, 1991

VIA UPS OVERNIGHT

Jack Haefling
8357 Lakeshore Tr.
Indianapolis, IN 46250

John L. Neal, Secretary-Treasurer
Ralph Brooks
c/o IBT Local Union 135
1233 Shelby Street
Indianapolis, IN 46203

R. V. Durham
c/o Hugh J. Beins, Esquire
Beins, Axelrod, Osborne
& Mooney
2033 K St., NW
Suite 300
Washington, D.C. 20006-1002

Re: Election Office Case No. P-979-LU135-SCE

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*") by Jack Haefling, a member of IBT Local Union 135. Mr. Haefling contends that certain employees of Local 135 campaigned for the R. V. Durham Unity Team slate on Union time and with a car owned by Local 135 in violation of the *Rules*.

Article X, § 1(b)(4) of the *Rules* provides that "[n]o member may campaign for . . . any other candidate during the time that is paid for by the Union or by any employer." However, campaigning incidental to work or regular Union business or during paid vacation, paid lunch hours or breaks or similar paid time off is not violative of the *Rules*. *Rules*, Article VIII, § 10(b). The Election Officer's Advisory on Campaign Contributions and Disclosure, dated August 14, 1991, further defines

"campaign contributions" to exclude volunteer time: ". . . an employee may perform personal services for a candidate or campaign after his/her normal working hours without the value of such services being considered a campaign contribution. However, if the employee utilizes an employer's office, office equipment, telephones, or the like in performing such services, a campaign contribution has been made by the entity contributing the utilization of its equipment or supplies." Advisory at page 7.

The investigation of this protest was conducted by the Washington, D.C. office of the Election Officer and Regional Coordinator Peggy A. Hillman. The investigation established the following facts: protestor identified two employees of Local 135 as being present on Friday morning, October 11, 1991 at a worksite engaging in campaign activities; he also claimed a car owned by the Local Union was being utilized by Local Union employees for campaign purposes.

Ralph Brooks and John Neal are Union employees and were engaged in campaign activities on October 11, 1991 on behalf of the R. V. Durham Unity Team slate. A Union car was also utilized by these individuals. However, the investigation established that each of these individuals, as well as other Local 135 employees present, were on paid vacation status on October 11, 1991. The *Rules* at Article VIII, §10(b) specifically provide that campaigning during "paid vacation . . . is not violation of the campaign contribution rules." Further, the Union permits its employees to use the cars they are provided by the Local for such employee's personal use; the pro rata portion of the expenses attributable to such personal use of the Union owned automobiles is reported as a form of additional compensation for tax purposes. In the Independent Administrator's decision in In Re Gregory/Spurgeon and IBT Local Union No. 135, 91-Elec. App.-135 (SA), (April 29, 1991), the identical issue was considered and ruled upon. In this case, the Independent Administrator affirmed a ruling of the Election Officer that under such circumstances, use of Union cars is not a violation of the *Rules*. ". . . [G]iven that the Local Union cars are used by the business agents for personal reasons, it is not a violation of the *Election Rules* for a business agent to use his car to travel to a worksite to campaign." *Id.* at page 4. Accordingly, the protest is DENIED.

Jack Haefling
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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

Peggy A. Hillman, Regional Coordinator

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c/o Richard Gilberg, Esquire
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