



OFFICE OF THE ELECTION OFFICER

INTERNATIONAL BROTHERHOOD OF TEAMSTERS

25 Louisiana Avenue, NW

Washington, DC 20001

(202) 624-8778

1-800-828-6496

Fax (202) 624-8792

Michael H. Holland
Election Officer

Chicago Office:

% Cornfield and Feldman

343 South Dearborn Street

Chicago, IL 60604

(312) 922-2800

February 7, 1991

VIA UPS OVERNIGHT

Gordon Teller
22332 17th Place, West
Bothell, WA 98021

Lawrence N. Weldon
Secretary-Treasurer
IBT Local 741
552 Denny Way
Seattle, WA 98109

F M. Reid
Manager, Freight Services
Sea-Land
3600 Port of Tacoma Road
Tacoma, WA 98424

Tim McGuire
Supervisor, Warehouse and
Freight Services
2800 24th Avenue, South
Seattle, WA 98144

Re: Election Office Case No. P-062-LU741-PNW

Gentlemen:

A pre-election protest filed under Article XI of the *Rules* for the IBT International Union Delegate and Officer Election. In his protest, Gordon Teller alleges that he was disciplined and discharged by his Employer, Sea-Land, because of his campaign activity in behalf of candidate Ron Carey.

The investigation shows the following: Mr. Teller was discharged on November 19, 1990 by Sea-Land. In its discharge notice to Mr. Teller, Sea-Land states that the discharge is because of "continued unauthorized activities while on company time." Sea-Land also points to two previous disciplinary actions taken against Mr. Teller — a letter of warning on August 16, 1990, and a letter of suspension on September 10, 1990 for similar offenses, i.e. engaging in non-work activity during work time. Thus the discharge was taken for cumulative offenses.

The letter of warning and the suspension issued by Sea-Land both involve Mr. Teller's actions while driving a company truck. Sea-Land

Gordon Teller
Page 2

alleged that Mr. Teller was holding campaign signs (in support of candidate Ron Carey) out the window of his truck while on company time. Mr. Teller admits that he had a Ron Carey sign, but denies that he waved it out the window. He says that he held the sign up in the window of the cab only on those occasions when he passed another Teamster driver.

Mr. Teller's discharge arises out of an incident at AIPac, a customer of Sea-Land. On November 14, 1990, while on official business at Sea-Land, Mr. Teller took an authorized bathroom break. To get to the bathroom he had to pass through the employee lunchroom. On his way through he was recognized by AIPac employees who are aware of his TDU activities. He was carrying a petition for Carey on his clipboard and he left the petition with the employees while he went to the bathroom. When he returned, he retrieved the clipboard, engaged in brief conversation regarding the petition and left. It is undisputed that all of the employees spoken to in the cafeteria were on their lunch break.

The combined lunchroom/bathroom excursion took approximately five minutes. Mr. Teller took five minutes off his lunch period to compensate.

While in the lunchroom, Mr. Tom McGuire, a supervisor of Warehouse and Freight Services, indicated that Mr. Teller was observed from 12:10 p.m. until 12:26 p.m. on November 19, 1990. Subsequently, Mr. McGuire wrote Sea-Land and complained that Gordon Teller had been asking for signatures on a Union petition in the lunchroom.¹ He stated further that "soliciting for anything on AIPac premises is against our company policy." Mr. McGuire requested that Sea-Land no longer dispatch Teller to AIPac." This letter to Sea-Land was the first complaint made about Mr. Teller's activity at AIPac that is known to Mr. Teller.

This letter, along with earlier disciplinary actions from AIPac, precipitated Sea-Land's decision to discharge.

Subsequent to the discharge, the entire matter was presented to a Step 2 Board of Adjustment pursuant to a collective bargaining agreement between Sea-Land and Teamsters Local 741. Mr. Teller was represented at the hearing by the Union Secretary-Treasurer Larry Weldon and his business agent Spiro Rochas. Mr. Teller believes that those Union representatives did an adequate job of representing him.

¹ The letter also complains of other instances of Teller hanging information on the bulletin board.

The Grievance Adjustment Board removed the first letter of warning, finding it to be untimely issued by Sea-Land under the provisions of the collective bargaining agreement. Consequently the suspension was reduced to a letter of warning and the discharge was reduced to a six-day suspension.

When Sea-Land reinstated Mr. Teller, it did so with a warning that future conduct of a similar nature will result in termination. Additionally, on November 30, 1990, Sea-Land issued a Notice of Intention to Discharge, complaining of Mr. Teller's "unauthorized activities while on company time at other customer work sites."²

Pursuant to an order of the United States District Court in the matter known as United States v. IBT, 728 FSupp. 1032 (S.D.N.Y., 1990), *Rules* have been promulgated and approved by Judge Edelstein of the United States District Court for the IBT International Union Delegate and Officer election.

Article VIII, § 10(d) of those *Rules* provides that no restrictions shall be placed on IBT members' pre-existing rights to utilize and have access to employer premises for campaign purposes and campaign activities.

Among the pre-existing rights referenced in that Section of the *Rules* are those rights available under the National Labor Relations Act and the Labor Management Relations and Disclosure Act.

Thus, all IBT members have the right to campaign, talk to fellow members, hand out literature, circulate petitions, and post material in non-work areas of the employer's premises during non-work time. It is unlawful under the NLRA and therefore a violation of the *Rules* for either the Employer or the Union to prohibit Union members from exercising their campaign rights. NLRB v. Magnavox, 415 US 322 (1974); District Lodge 91 v. International Association of Machinists, 814 F^{2d} 876, 125 LRRM 2021 (2nd Cir., 1987); NLRB v. Methodist Hospital of Gary, Inc. 733 F^{2d} 43, 116 LRRM 2327 (7th Cir., 1984).

Article VIII, Section 10(a) of the *Rules* incorporates the substantive body of federal law by requiring as follows:

No candidate or member may campaign during his/her working hours. Campaigning incidental to work is not, however, violative of this section. Further, campaigning during paid vacation, paid

². This discharge was also reduced during the subsequent grievance procedure.

Gordon Teller
Page 4

lunch hours or breaks, or similar paid time off is also not violative of this section.

It follows that Employer discipline that punishes members because they exercise these campaign rights is a violation of the *Rules*.

In this case all of the incidents that gave rise to the discipline by Sea-Land involved Mr. Teller's exercise of his campaign rights while at the job. With respect to the Ron Carey signs in the truck incident, the signs were displayed while Teller was driving the truck only at times when he saw another Teamster. The signs were not attached to the truck, and thus were associated only with him and not with Sea-Land. An investigative report submitted by Sea-Land to the Election Office shows that in a ten-hour period of time during which the Employer engaged in detailed surveillance of Mr. Teller's activities, only during 22 minutes did he display Carey signs, and such display was not continuous during such 22 minute period. Under these circumstances, the display of the Carey signs is incidental to Mr. Teller's work and such activity is allowable campaign activity under the *Rules*.

However, to the extent that such sign display while driving would create a safety hazard to other motorists, it is a legitimate subject of employer discipline. In this case it is unclear from the Sea-Land disciplinary correspondence with Mr. Teller that safety concerns during the signing incidents were the motivation for the disciplinary decisions.

In any case, the first letter of warning for "signing" has been removed from Mr. Teller's file, and the suspension has been reduced to a letter of warning. Sea-Land now is on notice that activity such as that engaged in by Mr. Teller that does not amount to a safety violation is permitted by the Election *Rules*. At this time, given the decision of the Board of Adjustment, this aspect of the protest is denied as moot, and Sea-Land's letter of warning may remain in Mr. Teller's file.

With respect to Sea-Land's decision to discharge Mr. Teller because of his activities at AlPac, the Election Officer finds that the AlPac no solicitation rule is overly broad on its face and therefore, the enforcement of the no solicitation rule against Mr. Teller, who was on an authorized bathroom break, is a violation of the *Rules*. It follows that Sea-Land is not free to discharge or discipline Mr. Teller because of AlPac's complaint. cf. West Texas Utilities Co., 34 LRRM 1048. It is a violation of the *Rules* for AlPac to invoke its invalid no solicitation rule against Mr. Teller's activities, and it is a violation of the *Rules* for Sea-Land to discharge Mr. Teller for soliciting in a non-work area on non-work time.

The Election Officer notes that Sea-Land has notified Mr. Teller that he has been charged with "unauthorized" activities while on company time by Span Alaska, K & L Distributors, and Packer Plus, Inc. To the extent that these employers have invalid "no solicitation" policies, and have improperly invoked them against Mr. Teller, Sea-Land is not free to discipline Mr. Teller for complaints from these Employers.

In order to impose a remedy against Sea-Land, the Election Officer affirms his authority to enforce the *Rules* with respect to Employers, such as Sea-Land and Alpac. Clearly, Employers as well as Local Unions are in a position to frustrate election campaign rights of Teamster members as defined in the *Rules*. As determined by the Independent Administrator in the matter known as McGinnis et al. v. Yellow Freight Systems et al., No. 91-Elec.App.-43, the Election Officer and the Independent Administrator have the authority to enforce in accordance with pre-existing law a member's right to engage in campaign activity on employer premises. Although an employer is not a party to the Consent Order, it is clear, as the Independent Administrator noted, that to effectuate the purpose of the *Rules* approved by Judge Edelstein and to fulfill the purpose and goals of the Consent Order, the officers appointed pursuant to the Consent Order must have the power to exercise jurisdiction over employers of IBT members. Thus, the Election Officer has the authority to exercise his authority over Sea-Land as an employer of IBT members.

For all of the foregoing I find that the *Rules* have been violated by Sea-Land when it discharged Gordon Teller, and find the following remedy is appropriate:

Sea-Land is ordered to:

- (1) cease and desist from disciplining its employees for engaging in campaign activity in non-work areas during non-work time;
- (2) cease and desist from disciplining its employees for engaging in campaign activity incidental to their work;
- (3) rescind the suspension action against its employee, Gordon Teller, and
- (4) restore all back pay that resulted from its suspension of action against its employee Gordon Teller.

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

Gordon Teller
Page 6

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/mca

cc Frederick B. Lacey, Independent Administrator
Christine Mrak, Regional Coordinator

IN RE:	:	91 - Elec. App. - 92 (SA)
	:	
GORDON TELLER,	:	
Complainant,	:	
and	:	DECISION OF THE
	:	INDEPENDENT
SEA-LAND SERVICE, INC.	:	ADMINISTRATOR
	:	
and	:	
	:	
IBT LOCAL UNION NO. 741,	:	
	:	
Respondents.	:	

This matter arises from an appeal of a February 7, 1991, decision of the Election Officer in Case No. P-062-LU741-PNW. A hearing was held before me by way of teleconference on March 8, 1991, at which the following persons were heard: Gordon Teller, the complainant; Ken Pederson, an attorney on behalf of Local 741; Lawrence Weldon, Local 741's Secretary-Treasurer; Floyd Reid, a Manager for Sea-Land Service, Inc.; Chuck Morrison, Warehouse Manager for Sea-Land Service, Inc.; Robert Attaway, attorney for Sea-Land Service, Inc.; Christine Mrak, the Regional Coordinator; Patty Warren, the Adjunct Regional Coordinator; and Barbara Hillman, on behalf of the Election Officer.

Mr. Teller alleges that he was discharged on November 19, 1990, by Sea-Land Service, Inc. ("Sea-Land") for engaging in campaign activity in support of Ron Carey's candidacy for

International General President. In short, Sea-Land relies on three incidents in defending its discipline of Mr. Teller.

First, on August 2, 1990, Mr. Teller held up a campaign sign in his truck while he passed another truck driver. Sea-Land sent Mr. Teller¹ a warning dated August 16, 1990, regarding this incident. Although the warning letter refers to the importance of operating the truck "in a safe, professional manner" and the potential for "dangerously distract[ing] motorists," the letter emphasizes that Mr. Teller "should never use [his] paid work time or company equipment to advance the advertisement of any of [his] personal or partisan interests."

Second, on September 5, 1990, Mr. Teller again held up a campaign sign in his truck while passing another driver. Sea-Land gave Mr. Teller a two-day suspension for this activity. The suspension letter dated September 10, 1990, refers to Mr. Teller's "unauthorized activities while operating company equipment."

The third incident occurred on November 14, 1990. Mr. Teller was dispatched to pick up some freight from Alpac, a regular customer of Sea-Land. Mr. Teller was at Alpac for a total of about fifteen minutes. After Mr. Teller went to the Alpac shipping office to check his paperwork, he entered the plant and crossed the employee lunch room to get to the bathroom. Some of Alpac's off-duty employees in the lunch room recognized Mr. Teller, and he left

¹ Apparently Sea-Land had placed Mr. Teller under surveillance by a private investigator. As a result of this surveillance Sea-Land learned of Mr. Teller's activity.

his clipboard containing a Ron Carey petition with them while he used the bathroom. On his return to the lunch table, Mr. Teller retrieved his clipboard, talked briefly with the employees, and left the Alpac property. Mr. Teller was in the lunch room only a few minutes.

On November 16, Tim McGuire, Alpac's manager of warehouse and freight services, wrote to Sea-Land to complain about Mr. Teller's "asking for signatures for a Union petition" and to further note that "soliciting for anything on Alpac premises is against our company policy." In his letter, Mr. McGuire also mentions that Mr. Teller "is constantly hanging Union information on our bulletin board." Mr. McGuire requested that Sea-Land "no longer dispatch [Mr. Teller] to Alpac because of his disruptive nature."

On November 19, 1990, Mr. Teller was sent a discharge letter by Sea-Land. In that letter, Sea-Land stated that "you have no intention of refraining from using company time and/or equipment to advance your personal or partisan interest. Sea-Land can ill afford to have you do anything other than Sea-Land's work when you are on company time."

Pursuant to the collective bargaining agreement between Sea-Land and Local 741, Mr. Teller grieved his discharge and a hearing was held on November 28, 1990. As a result of that proceeding, Mr. Teller's first letter of warning was invalidated. His subsequent two-day suspension was reduced to a written warning, and his discharge was reduced to an unpaid suspension of six days; the

number of days of work he lost between his termination and the date of the decision on his grievance. Mr. Teller was reinstated on November 30, 1990. However, on the same day, Sea-Land issued him a "Notice Of Intention To Discharge" on the basis of Mr. Teller's "unauthorized activities while on company time and at other customer worksites." In that letter, Sea-Land advised Mr. Teller that three employers in addition to Alpac had requested that he not be dispatched to them because of his "unauthorized activity." Although the letter on its face is entitled "Notice Of Intention To Discharge," Mr. Teller has yet to be discharged.

Sea-Land does not challenge the jurisdiction of the Election Officer or the Independent Administrator to address this protest. Indeed, it cannot in light of the Independent Administrator's ruling In Re: Robert McGinnis and IBT Local 710, Yellow Freight Systems, Inc., 91 - Elec. App. - 43 (January 23, 1991).

Consistent with federal law, the Rules For The IBT International Union Delegate And Office Election (the "Election Rules") provide that while no member may campaign during work hours, campaigning that is "incidental" to work does not violate the Election Rules. In addition, campaigning during lunch hours or breaks also does not violate the Election Rules. See Election Rules, Article VIII, Section 10.a. As stated by the Election Officer in his Summary, "[u]nder federal substantive law, it is well-settled that employees have the right to engage in campaign

activities in non-work areas during non-work time." In addition, the Election Officer further states:

Mr. Teller's duties as an employee in this case require him to enter the premises of Alpac on a regular basis. While he is performing his duties there, he can rightfully use the employees' bathroom and traverse the employees' lunch room. He must be allowed the same rights as Alpac employees to engage in campaign activity in nonwork areas during nonwork time because he is not requiring any accommodation from the employer's property rights in order to do so. (Southern Services, Inc., 300 NLRB No. 161, 136 LRRM 1066 (December 31, 1990)).

In view of all this, it is clear that Mr. Teller's activity of "waiving" a sign at other drivers while performing his duties is precisely the kind of incidental activity that the Election Rules do not prohibit. By taking disciplinary action against Mr. Teller on the basis of such protected activity, Sea-Land violated the Election Rules.

As for Mr. Teller's visit to Alpac on November 14, not only does this contact appear incidental to his work, but it appears to have occurred while Mr. Teller was on a legitimate bathroom break. Accordingly, his activity was not prohibited by the Election Rules. To the extent Alpac had a policy to prohibit such activity, its policy is violative of Mr. Teller's campaign rights guaranteed by the Election Rules.

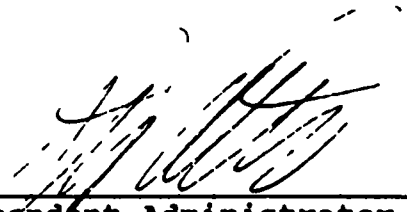
Accordingly, the Election Officer's ruling and the remedy imposed, as detailed in the Election Officer's Summary (a copy of which is attached) is affirmed in all respects.

Lastly, Mr. Teller objected to Sea-Land's request for a hearing as untimely. Article XI, Section 1.a(5) of the Election

Rules provides that a request for a hearing to the Independent Administrator must be made within 24 hours after receiving the Election Officer's determination. In addition, each of the Election Officer's decisions advises all interested parties of their right to request a hearing within 24 hours. The Election Officer's decision in this case was dated February 7, 1991, and was mailed UPS overnight delivery to, inter alia, Floyd Reid of Sea-Land. Mr. Reid's request for hearing to the Independent Administrator is dated March 4, 1991, nearly one month following the Election Officer's decision. Mr. Reid stated at the hearing that he did not receive a copy of the Election Officer's decision until an employee (who had received a copy from Mr. Teller) gave it to a Sea-Land Manager, on or about March 4, 1991. Although the Election Rules do not specify the method of service, UPS overnight mail is clearly sufficient to insure prompt delivery of the Election Officer's decisions. In addition, as explained by the Election Officer, UPS overnight carries with it a presumption of delivery unless UPS notifies the Election Officer that delivery could not be made. In this case, however, we are faced with conflicting facts -- Mr. Reid contends he never received the UPS package; UPS, on the other hand, did not notify the Election Officer that it had difficulty delivering the package.

In the interest of insuring "fair, honest and open elections," (Election Rules at p.1), I have, under these circumstances, considered Sea-Land's appeal as timely filed. I would suggest,

however, that in the future when this issue again arises, that the Election Officer contact UPS and attempt to obtain verification that the package was delivered as well as the identity of the individual who signed for the package.



Independent Administrator
Frederick B. Lacey
By: Stuart Alderoty, Designee

Dated: March 12, 1991.