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December 27, 1990

VIA UPS OVERNIGHT

Daniel Hanners
6641 Pershing Avenue
Rockford, IL 61109

Gerald F. Reilly
President
IBT Local 722
344 N. 30th Road
LaSalle, IL 61301

Re: Election Office Case No. ~~P-094~~-LU722-SCE

Gentlemen:

~~P-094~~
P-094

A pre-election protest was filed pursuant to Article XI, §1 of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules"). The protestor complains of the refusal of Local 722 to notify Consolidated Food, his employer, that he and his fellow steward, Mark Serafin, allied with Mr. Hanners with respect to the delegate and alternate delegate election, were to be given time off for Union business to enable them to attend Local 722's nominations meeting. The protest claims that as a result of such refusal, Mr. Serafin, was forced to utilize the entirety of his 80-hour unpaid leave--which he had planned to utilize for campaigning purposes--in order to attend the nominations meeting.¹

Local 722 contends that it only authorizes leaves for Union business for stewards for meetings when the subject matter of the meeting particularly involves the steward in question, e.g., meetings concerning grievances of members represented by the steward. Local 722 contends that it has never authorized leave for

¹The employer permits its employees to take unpaid leaves of absence after each such employee has completed a certain number of "runs". However, such leave may not be segmented. Thus the employee's utilization of any portion of such leave time nullifies such employee's right to any further unpaid leave until such time as the employee completes a number of runs sufficient to obtain further unpaid leave.

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Union business for stewards to attend general membership meetings or nominations meetings. The protestor disputes the Local's position.

The Election Officer's investigation determined that Local Union 722 has requested leaves for Union business for stewards to attend monthly craft meetings in addition to grievance meetings. However, craft meetings, while not necessarily directly involving any particular steward, are, in fact, meetings relating to the employer whose members are represented by the stewards; they are not general membership meetings which involve the business of the Local as a whole. While Mr. Hanners has contended that he has received leaves for "Union business" to attend general membership meetings, he could not produce any documents indicating that Local 722 requested that he be granted such a leave. He further admits that his employer was previously rather relaxed about granting leaves for "Union business" and accepted all requests; now, Consolidated Foods requires written requests from Local 722 before granting such a leave.

It is undisputed that Mr. Hanners first learned that Local 722 would not request that he be granted a leave for Union business to allow him to attend the nominations meeting on Friday, December 7, 1990, two days before the Sunday nominations meeting. It is also undisputed that on said Friday night Mr. Serafin was in Lincoln, Nebraska, on a company assignment, when he was first informed, by Mr. Hanners, that Local 722 would not request a leave for him to attend the nominations meeting.

Since both Mr. Hanners and Mr. Serafin were scheduled to work on Sunday, December 9, 1990 during the time of the nominations meeting, the refusal of Local Union 722 to request a leave on their behalf would enable them to nominate or second in writing. Rules, Article II, §3(f). Any member may accept a nomination in writing. Rules, Article II, §3(h). However, the shortness of the period between the time Mr. Hanners and Mr. Serafin learned that they would not be granted Union business leave to attend the nominations meeting, and the time of the nominations meeting, placed serious impediments to their being able to timely submit written nominations, seconds and/or acceptances.

Mr. Hanners was able to arrange to work a shift other than his regular shift on Sunday, December 9th, 1990. Thus, he was able to attend the nominations meeting without any loss. Mr. Serafin was unable to arrange with his employer such an accommodation and thus was forced to utilize the entirety of his right to a 80-hour unpaid leave in order to attend the nominations meeting.

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Based on the foregoing, the Election Officer is unable to find that Local 722 treated either Mr. Hanners or Serafin in a discriminatory manner or otherwise violated the Rules by refusing to request that Consolidated Foods grant them a leave for "Union business" in order to enable them to attend the nominations meeting. Insufficient evidence was presented that the past practice of Local 722 is to request leaves for stewards to attend either general membership meetings or nominations meetings or indeed any meetings other than meetings involving employees of the employer represented involved by stewards.

However, it is the determination of the Election Officer, as is verified by his Regional Coordinator who investigated this protest, Peggy A Hillman, that both Mr. Hanners and Mr. Serafin sincerely anticipated that the Union would request that they be granted a leave for Union business to enable them to attend the December 9, 1990 nominations meeting. This set of circumstances and miscommunications resulted in Mr. Serafin's loss of his right to unpaid leave which he could have utilized during the delegate and alternate delegate campaign period, and which the Election Officer determined that he intended to utilize, for purposes of campaigning.

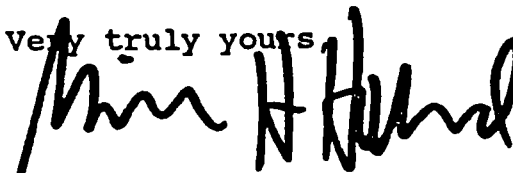
Accordingly, and limited to and under these circumstances the Election Officer determines that Mr. Serafin should have restored to him the right to take an unpaid leave of absence, in order to engage in campaign activities. Ordinarily the obligation of a Local Union to certify a request for a time off as Union business relates solely to time off for attendance of the IBT International Convention or for purposes of observing, and not for campaigning, Rules, Article IX, §1(c). In this case the Election Officer, however, determines Local 722 upon request from Mr. Serafin shall request from his employer, a leave for him for Union business to enable Mr. Serafin to be "made whole" for the miscommunications which occurred here.

Mr. Serafin may not request that he be granted a leave for "Union business" for a period in excess of 40 hours. Further, he must utilize all hours available to him from his employer for purposes of taking unpaid leave and use such hours consecutively with the hours for which he is granted leave for Union business. Between the date of this decision and the date of counting of the ballots for Local 722's delegate and alternate delegate election, Mr. Serafin may not utilize more than a total of 80 hours of both union business and unpaid leaves for purposes of campaigning.

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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/BJH/sst

cc: Mr. Frederick B. Lacey
Peggy Hillman, Regional Coordinator

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In Re: Daniel L. Hanners and Mark Serafinn

Complainants/ Appellants,

and

IBT Local Union 722,

Respondent/ Appellant.

DECISION OF THE INDEPENDENT ADMINISTRATOR

This matter is before me on appeal from a December 26, 1990, Decision of the Election Officer in Case No. P-094-LU722-SCE. On January 7, 1991, a hearing was conducted in my office by way of teleconference during which the following persons were heard: John Sullivan and Peggy Hillman on behalf of the Election Officer; William Cavanagh, as attorney for IBT Local Union 722 ("Local 722"); Daniel Hanners ("Hanners") and Mark Serafinn ("Serafinn"), the Complainants/Appellants.

This appeal arose under Art. VIII, §§4 and 10 of the Rules for the IBT International Union Delegate and Officer Election, revised August 1, 1990 ("Election Rules"). At issue in this protest are the allegations of Hanners and Serafinn that they were denied the opportunity to take unpaid "stewards" leave in order to attend the Local Union's nominations meeting. Their request for unpaid leave was denied by Jack V. Jacobs, the Recording Secretary of Local 722, and Gerald Reilly, the President of Local 722.

I find the following facts:

1. Hanners and Serafinn are employees of Consolidated Freightways ("Consolidated") stationed at Consolidated's Peru, Illinois terminal. They are both extra board drivers.

2. Hanners and Serafinn are Local 722 shop stewards and candidates for the position of delegate to the 1991 IBT International Convention.

3. Under the dispatch system that governs Hanners' and Serafinn's employment as extra board drivers, they are required to be available by the telephone twenty-four hours a day for dispatch. When they receive a call from the employer, they are required to report to the Peru terminal within two hours. If an employee does not respond to a call, or report in a timely fashion, he is subject to discipline.

4. There are two exceptions to this rule:

(a) Hanners and Serafinn need not be on call if to do so would require them to work in excess of the Department of Transportation's hours of service regulations. These regulations require an eight-hour break after a fifteen-hour period of work, and a break after the completion of seventy work hours in an eight-day period.

(b) Hanners and Serafinn are entitled to periods of time off after the completion of a specified number of runs, i.e., thirty-two hours after six runs; fifty-six hours after twelve runs; and eighty hours after eighteen runs. An employee

may request this accrued time off at any time; however, all accrued time must be taken at one time. For example, if an employee wants two hours off, he must take all of his accrued time.

5. Art. IV of the National Master Freight Agreement ("NMFA Art. IV") provides that stewards shall be permitted time off without pay to attend union meetings. Such time off does not count as leave under paragraph 4(b) above.

6. In the past, Consolidated has granted time off to union stewards to attend union meetings in response to oral requests. Recently, however, Consolidated has insisted that such requests be made in writing.

7. The Local Union has submitted requests to the employer for time off for Hanners and Serafinn to attend grievance screening and regular craft meetings and they have been granted unpaid leave to attend those union meetings.

8. Hanners and Serafinn had an expectation that the Local Union would submit a request to the employer for unpaid leave for their attendance at the Local Union nominations meeting.

9. On December 7, 1990, Hanners went to the Local Union's office to determine whether such a letter had been sent to the employer for Hanners and Serafinn for the upcoming Local Union nominations meeting, to be held on December 9, 1990. The Local Union Recording Secretary allegedly stated, in response to Hanners' inquiry about the letter, "I don't have to do a damn

thing; you're running against me; get there on your own." The Local Union President, Jerry Reilly, also refused to submit a request for unpaid leave for Hanners and Serafinn.

10. Because the respondents refused to submit a request for unpaid leave to permit Hanners and Serafinn to attend the nominations meeting, Serafinn was required to take his accrued leave, eighty (80) hours, to attend the meeting. Hanners was able to adjust his schedule, i.e., he met the hours of service threshold (see Nos. 4 §(a) and (b) supra, p.2), so that he would not be on call during the time of the nominations meeting.

11. Serafinn had planned to use his accrued time off to campaign for election as delegate. Given the amount of available work at this time of year, Serafinn contends that he would be unable to accrue eighty additional hours of time off before the mailing of ballots.

CONCLUSION

Local 722 contends that NMFA Art. IV concerning the time off without pay for union stewards is only applicable to union meetings that concern grievances directly involving the steward. Local 722 posits that union stewards are not entitled to time off under that provision for attendance at membership or nominations meetings. I disagree.

Hanners and Serafinn contend and I so find, that pursuant to NMFA Art. IV, their employer, Consolidated, has in the past

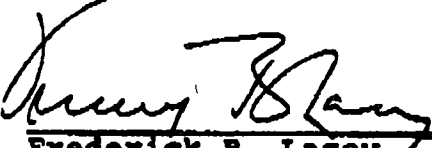
granted leave for union stewards to attend Local 722 grievance meetings, craft meetings and various other meetings.

Thus, I conclude that Local 722 grievance and craft meetings are to be considered "Union" meetings under NMFA Art. IV; hence, a Local 722 nominations meeting is also to be considered a "union" meeting under NMFA Art. IV.

I further conclude that Local 722 should have submitted a letter request to Hanners' and Serafinn's employer on their behalf requesting time off to attend the Local 722 nominations meeting.

As a remedy, in his December 26, 1990, Decision, the Election Officer determined that Local 722 must request of Consolidated forty hours of unpaid leave for Serafinn to engage in union business. As Hanners was able to adjust his schedule to attend the nominations meeting, no remedy was required in his case.

Accordingly, I affirm the December 26, 1990, Decision of the Election Officer and direct Local 722 to submit a request to Consolidated for forty hours unpaid leave for Serafinn.



Frederick B. Lacey
Independent Administrator

Dated:

Jan 9, 1991