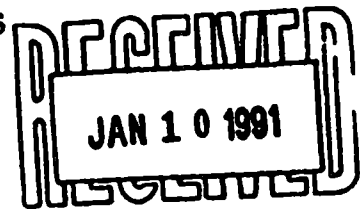




OFFICE OF THE ELECTION OFFICER
 % INTERNATIONAL BROTHERHOOD OF TEAMSTERS
 25 Louisiana Avenue, NW
 Washington, DC 20001
 (202) 624-8778
 1-800-828-6496
 Fax (202) 624 8792



Michael H. Holland
 Election Officer

Chicago Office:
 % Cornfield and Feldman
 343 South Dearborn Street
 Chicago, IL 60604
 (312) 922-2800

January 8, 1991

VIA UPS OVERNIGHT



LEGAL DEPARTMENT

John Kelder
 18 Farries Ave.
 Florida, NY 10921

Yellow Freight Systems
 1000 Homstead Ave.
 Maybrook, NY 12543

James E. McNeil
 President
 IBT Local Union 707
 66-20 Queens Blvd.
 Woodside, NY 11377

Re: Election Office Case No. P-160-LU707-NYC

Gentlemen:

A pre-election protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules"). The protest alleges that Yellow Freight Systems, Inc., the employer of John Kelder, violated the *Rules* 1) by prohibiting Mr. Kelder from engaging in campaign activities on Yellow Freight property other than during non-work time occurring within his shift and for a period of time not to exceed one-half hour prior to or after the conclusion of his shift, and 2) by issuing Mr. Kelder warning notices, allegedly in retaliation for his having engaged in campaign activities. The protest also alleges that Local Union 707 violated the *Rules* by failing to timely post the list of nominated candidates for delegate and alternate delegate in all work places where Local 707 members are employed.

I. Posting of the List of Nominated Candidates.

Local 707 concedes that the list of nominated candidates was not timely posted at the Yellow Freight facility employing Local 707 members. Local 707 states that the list was sent to all its stewards at all its facilities with instructions to post it in a timely fashion. The steward at Yellow Freight, Mr. Foley, to whom the posting and instructions were directed was not at work due to illness. Therefore, the material

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remained in Mr. Foley's mailbox until the Local learned that the notices had not been posted at Yellow Freight. When the Local became aware that the notices were not posted at Yellow Freight, a Local Union delegate was sent to post such notices.

The Election Officer investigation determined that the posting of delegate and alternate delegate nominees was not accomplished at Yellow Freight until December 20, 1990, one day after Mr. Kelder's protest, the document which apparently notified Local 707 of the fact that the notice had theretofore been posted at Yellow Freight. The Election Officer investigation further determined that the notices of nominated candidates were timely posted at the vast majority of Local 707 bulletin boards and at the vast majority of employer locations where Local 707 members are employed.

Notices were also late for members employed at two other employers. At Johnsbury Trucking in Elmsford, New York the notice, while not posted on December 13, 1990 was in fact posted on December 14, 1990. The same appears true for two other employers employing 707 members housed in the same building housing St. Johnsbury Trucking. The protestor presented no other witnesses or documents demonstrating untimely posting.

Under these circumstances, the Election Officer determines that Local Union 707 did act in compliance with the *Rules* with respect to the posting of the results of the nominations meetings. The few instances where the notice was posted tardily appeared to be inadvertent. Other than at Yellow Freight, the tardiness was minimal. The Local Union's explanation of the Yellow Freight's situation appears factually correct; no contrary facts were presented by the protestor. Further, the election at Local 707 is a mail ballot election which will provide all members with further additional notice prior to the date they are required to vote of the identity of all nominated candidates for delegate and alternate delegate. For these reasons this portion of the protest is DENIED.

II. The Warning Notices.

Mr. Kelder has received four warning notices from Yellow Freight regarding alleged infractions of work rules. No suspension or other form of discipline has been meted against Mr. Kelder.

One notice was issued in the summer of 1990, for Mr. Kelder inappropriately parking in the space reserved for the business agent of Local 707. Mr. Kelder admits that he did park improperly and further admits that similar warning notices have been issued to other Local 707 members employed by Yellow Freight for similar infractions. He contends, however, that Yellow Freight does not enforce the rule uniformly and does not always issue warning notices for improper parking.

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The second warning notice, issued in September, 1990, reprimanded Mr. Kelder for allegedly not working when he should have been. A rebuttal letter was submitted by Mr. Kelder and a grievance meeting held. The letter was not rescinded by Yellow Freight.

Two additional warning letters were issued in December, 1990, both reprimanding Mr. Kelder for not following instructions by failing to report to his supervisors when he was available for a new assignment. Grievance meetings are scheduled to be held between Local 707 and Yellow Freight on these matters.

Evidence was not presented to the Election Officer sufficient to demonstrate that the warning notices were issued by Yellow Freight in retaliation for Mr. Kelder's campaign activity. Other than that these notices were issued and that Mr. Kelder is engaged in campaign activities, no linkage was established between these facts. There has been no allegation that the Local Union was in any way involved in the issuance of these warning notices. There is no evidence that the issuance of these warning notices have in any way prevented Mr. Kelder from engaging in further campaign activities or "chilled" his or any other member's campaign participation. Under these circumstances the Election Officer is unable to conclude that the *Rules* have been violated and therefore this portion of the protest is also DENIED.

III. Access for Campaigning Activities.

Union members have the right to engage in campaign activities -- talk to fellow members, hand out literature, pass petitions and the like -- in non-work areas of their employer's premises during non-work time. Such right is a right granted by substance of federal law and neither the Union nor the employer can prevent such campaign activities. NLRB v. Magnavox, 415 U.S. 322 (1974); Eastex v. NLRB, 437 U.S. 556 (1978); District Lodge 91 International Association of Machinists v. NLRB, 814 F.2d 876 (2nd Cir. 1987); NLRB v. Methodist Hospital, Gary, Inc., 732 F.2d 483 (7th Cir. 1984); ABF Freight System v. NLRB, 673 F.2d 229 (8th Cir. 1982).

Yellow Freight recognizes that IBT members employed by it have rights to engage in such campaign activities. Its rules permit distribution and solicitation in non-work areas during non-work time.

Yellow Freight, however, limits, by its rules, access to its facilities, and the ability of IBT members, employed by Yellow Freight, to engage in campaign activities, to no more than one half-hour prior to and one half-hour after the start and conclusion of the employee's shift. Thus in this case, as the Election Office investigation determined that Mr. Kelder, who was engaging campaigning activities in non-work areas more than an hour prior to the start of his shift (clearly non-work time), was asked to leave the Yellow Freight premises, escorted from the premises, and given an "information letter" from Yellow Freight stating that his presence on company

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property prior to one half-hour prior to the start of his shift was "unacceptable." In effect, Yellow Freight, by its rules, prohibits employees from having access to its property for engaging in campaign activities during a period greater than a half-hour before and a half-hour after start and conclusion of the employee's shift.

The limitations placed by Yellow Freight on the rights of Union members, employed by it, to engage in campaign activity on its property during non-work time and in non-work areas conflicts with the rights granted such members by substantive federal law. A rule denying off duty employees entry to the employer premises exterior to the terminal or plant building is presumptively invalid. Tri-County Medical Center 109 NLRB 1089 (1976). NLRB v. Pizza Crust Company, 862 F.2d 49 (3rd Cir. 1988), NLRB v. Ohio Masonic Home, 893 F.2d 1144 (6th Cir. 1989), NLRB v. Southern Maryland Hospital Center, 906 F.2d 1499.

Further, a rule denying off duty employees access to the interior of the employer's premises is invalid unless it is and has been applied to all off duty employees seeking access to the interior of the premises for any purposes and not just to employees seeking to engage in campaign or other Union-related activities. The rule, to be valid, must also be clearly disseminated to all employees. See cases cited above.

Thus Yellow Freight's rule, which apparently prevents IBT members employed by it from having access to the company's property during off duty hours, including the exterior of the company's terminal building(s), is clearly invalid. All IBT members employed by Yellow Freight, regardless of the location of the Yellow Freight facility at which where they are employed, cannot be prevented from entering the company's property, exterior to the actual terminal building itself, such as employee parking lots, employee entrance to the terminal building, and similar locations. IBT members employed by Yellow Freight must be permitted to engage in campaign activities in such areas during their off duty hours.

Further, as indicated above, Yellow Freight's limitations with respect to off duty employees are only valid where such restrictions have been clearly disseminated to all employees and have been and are being uniformly applied, regardless of the purpose the employee seeks entrance to the building facilities. The Election Officer's investigation in the instant case demonstrates that IBT members employed by Yellow Freight at its Maybrook, New York facility have historically been permitted and continue to the present time to be permitted to enter the terminal building prior to a half-hour before the commencement of such employees' shifts. The Election Officer investigation determined that IBT members normally and historically have congregated in and around the timeclock, engaging in conversation between and among each other, until one half-hour prior to the start of their shifts, the time when they are permitted to "clock in." Further, such members have on occasion gone into the breakroom or other non-work areas and then returned to the timeclock one half-hour prior to the start of their shift in order to "clock in."

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The Election Officer has discovered no situation, other than Mr. Kelder, where an employee was reprimanded or directed to leave the terminal facilities of the Yellow Freight terminal in Maybrook, New York because the employee had entered such facilities more than one half-hour prior to the start of his shift. Thus Yellow Freight at its Maybrook facility has applied its off duty employee rule only with respect to IBT members employed by it who seek to engage in campaign activities, a violation of such member's rights under substantive federal law.

The Election Officer when interviewing IBT members employed at the Maybrook, New York Yellow Freight facility inquired as to whether such employees - other than the protestor, Mr. Kelder -- were aware of any company rule with respect to access to the facility by off duty employees. None were so aware. The Election Officer's investigation thus demonstrated that the rule has also not been clearly disseminated to all IBT members employed at the Maybrook facility of Yellow Freight. noted

In accordance with the foregoing, the Election Officer determines that Yellow Freight's rules with regard to access to its premises by off duty employees are invalid to the extent that such rules prohibit access to that portion of the premises exterior to Yellow Freight's building facilities. Yellow Freight, by maintaining invalid no solicitation limitations with respect to off duty employees violated the *Rules* and in particular Article VII, § 10 (d) of the *Rules*. To remedy such violation, the Election Officer orders Yellow Freight to post the attached notice, entitled "Notice to Teamster Members," at all its facilities.

With respect to the Maybrook, New York facilities of IBT, no limitations may be placed upon off duty employee access. Thus Yellow Freight has violated Article VIII, § 10 (d) of the *Rules* not only by its general overly broad no solicitation provision for off duty employees but by attempting to impose any limitations upon access at its Maybrook, New York location. To remedy the violation which occurred at the Maybrook, New York facility, Yellow Freight is to post at such facility the attached notice entitled Notice to Teamster Members Employed in Maybrook, New York.

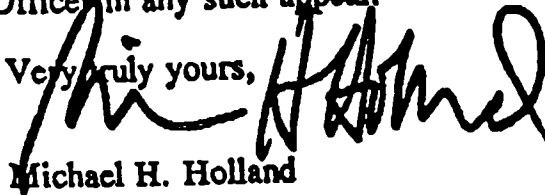
The notices referred to above are to be posted by Yellow Freight at the appropriate facilities within seven days of its receipt of this decision. Within three days thereafter, Yellow Freight shall file appropriate affidavits with the Election Officer demonstrating its compliance with the posting requirements of this decision.

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

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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

cc: Mr. Frederick B. Lacey

Daniel Hornbeck, Esq.
Yellow Freight Systems, Inc.
P.O. Box 7563
10990 Roe Avenue
Overland Park, Kansas 66207

Susan Jennik, Esq.
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30 Third Ave., Room 619
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Michael H Holland
Election Officer

January 15, 1991

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VIA FACSIMILE and UPS OVERNIGHT

The Hon Frederick B Lacey
Independent Administrator, IBT
LeBoeuf, Lamb, Leiby & MacRae
One Gateway Center
Newark, New Jersey 07102-5311

Re: Election Officer Case No. P-160-LU707-NYC

Dear Judge Lacey:

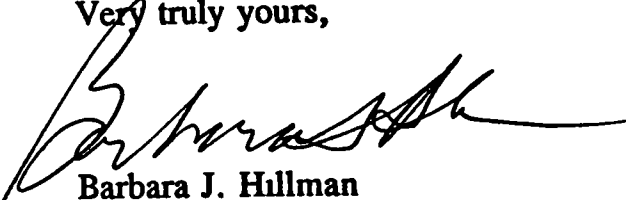
This is written at your direction to memorialize the Settlement agreed to by the parties during the appeal hearing before you in the above-entitled cause. ~~At said hearing, Yellow Freight Systems, Inc., the employer, agreed that it would not enforce any rule restricting IBT members employed by it at its Maybrook, New York facility from access to such facility, both exterior and interior to the terminal and other buildings thereon, for campaigning purposes with respect to the 1991 IBT International Union Delegate and Officer Election. Yellow Freight Systems, Inc. agreed to post a notice on all company bulletin boards at such facility informing all IBT members employed at such facility of their rights to engage in such campaigning activities.~~

The foregoing resolution was satisfactory to all parties to the above cause. Such Settlement resolves the issues before you on the appeal of the above case with respect to the protest filed by John Kelder, which dealt specifically to access issues at the Maybrook, New York facility. It is understood and agreed by the parties that, by agreeing to said resolution, none of the parties have waived their respective positions regarding the validity of Yellow Freight Systems, Inc.'s rules at any facility other than the Maybrook, New York facility. It is further

The Hon. Frederick B Lacey
Independent Administrator, IBT
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understood, and agreed to by the parties, that the agreement by Mr. Kelder to this resolution does not waive any right he might have pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990, to file a timely post-election protest with respect to the delegate election conducted at Local Union 707.

Very truly yours,



Barbara J. Hillman

BJH/kpm

cc Larry G. Hall, Esquire
Susan Jennik, Esquire
IBT Local Union 707