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February 20, 1991

VIA UPS OVERNIGHT

Richard L. Draeger
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Columbus, KS 66725

Gordon A. Sweeton
President
IBT Local Union 823
1601 Maiden La
Joplin, MO 64804

Re: Election Office Case No. P-486-LU823-MOI

Gentlemen:

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") by Richard L. Draeger, a member of Local 823. Mr. Draeger alleges in his protest that on February 11, 1991, an Assistant Business Agent for Local 823 was campaigning on Union-paid time at the Yellow Freight Company in Baxter Springs, Kansas. Specifically, Draeger claims that he witnessed Jim McCall, a Local 823 Business Agent, distributing handbills in the dock area of the barn, and later observed a pile of handbills on the table in the break-room. Mr. Draeger further alleges that the majority of the time McCall spent at the facility was devoted to campaigning and not legitimate Union business.

The investigation conducted by the Election Officer disclosed the following facts:

On Monday, February 11, 1991, Local 823 Assistant Business Agent Jim McCall went to the Yellow Freight barn in Baxter Springs, Kansas to deliver a ballot box for a steward election which was scheduled for February 12, and 13 and to discuss a grievance with an employee, Galen King.¹

¹McCall states that over the weekend he had received a call from his supervisor about a work problem involving Galen King, a member of 823 who worked at the docks at the Yellow Freight barn.

Mr McCall arrived at the facility at approximately 3 15 p m and located the individual who had agreed to handle the steward election, Eugene Henson McCall met with Henson for approximately twenty minutes and also gave him a stack of campaign flyers to pass out during the steward election McCall also met with Mr King to discuss his grievance for approximately ten to fifteen minutes

Mr Draeger asserts that McCall then remained on the Yellow Freight dock for approximately 50 minutes to campaign among the employees for the upcoming delegate elections In support of his allegations, Mr Draeger submitted the names of seven (7) individuals who he claims were approached by McCall for campaigning purposes and given copies of the handbill Mike Gordon, the Election Office Regional Coordinator, was successful in contacting four of these seven individuals Each of the individuals interviewed by Mr Gordon related substantially similar accounts of their February 11, 1991 conversations with Mr McCall

All four individuals stated that Mr McCall spoke to them about subjects other than the delegate and alternate delegate elections and only three recall that McCall briefly referred to the election as he handed them copies of the handbill The four (4) employees interviewed by Gordon stated that they heard McCall talking with members about grievance issues, the status of the master freight negotiations, the problems of working shorthanded, and the stewards election

Mr McCall has been employed as an Assistant Business Agent for Local 823 for approximately one month Mr Draeger states that during the month that McCall has been an Assistant Business Agent, he has visited the Yellow Freight barn somewhere between two and four times and that in those visits he has "walked the dock" speaking with members about their concerns for anywhere between thirty minutes and two hours Mr McCall states since his appointment as an Assistant Business Agent, he has visited Yellow Freight four or five times to talk about grievances or work-related issues

Mr McCall also stated that during his February 12 visit to the Yellow Freight barn, he gave about fifty handbills to Skip Shockley, an employee and member of Local 823, and asked Shockley to give the handbills to Russ Harper, the Union steward who worked on the graveyard shift However, McCall states that the next morning, February 12, 1991 he telephoned Harper and instructed him not to personally distribute the flyers to voters Harper informed McCall that he had not done so, but had instead placed the handbills on the table near the steward ballot box so that voters could take one if they so wished

It is undisputed that Mr McCall spent approximately one hour at the Yellow Freight Barn. Over one hundred sixty members are employed at Yellow Freight and approximately seventy-five members work in the dock area. The first dock shift ends at 3 30 p m and the second shift begins at 3 00 p m so that there were about fifty employees working at the dock during the period when McCall was visiting the dock area of Yellow Freight

Article VIII, § 10(b) of the *Rules* provides that

All Union officers and employees, if members, retain the right to participate in campaign activities, including the right to run for office, to openly support or oppose any candidate, to aid or campaign for any candidate, and to make personal campaign contributions. However, such campaigning must not involve the expenditure of Union funds. Accordingly, members, officers, and employees of the Union may not campaign on time that is paid for by the Union. Campaigning incidental to regular Union business is not, however, violative of this section.

As stated above, Mr. McCall asserts that his actions were not in violation of Article VIII, § 10(b) of the *Rules* because his distribution of literature was incidental to the legitimate business reasons for his presence at the Yellow Freight Barn. The statements submitted by Local 823 members working at the barn support Mr. McCall's assertion. The individuals interviewed stated that they observed Mr. McCall engaged in conversations either about contract issues, grievances or the steward election and that he either did not talk about the delegate election, or only referred to it briefly during the course of conversations concerning other matters.

Moreover, although Mr. Draeger contends that the primary purpose for Mr. McCall's visit to the dock area was for campaigning purposes, he did not actually observe Mr. McCall approaching members to talk about the delegate and alternate delegate elections. Rather, Mr. Draeger witnessed Mr. McCall handing out the flyers as he talked to members. At least two of the individuals interviewed stated that Mr. McCall made no attempt to distribute literature to them and that Mr. McCall only gave them the handbill after they specifically requested a copy.

Based on the foregoing, the Election Officer determines that Mr. Draeger was on legitimate Union business and that the distribution of the literature to employees, and the instructions to place the literature near the voting area in the break-room was incidental to his legitimate Union business on the premises of the Yellow Freight Barn. The facts establish that Mr. McCall went to the barn that day to set up the steward election and to speak to an employee about a grievance. The facts also establish that in the month since Mr. McCall was appointed Business Agent, he has visited the facility on at least two (2) prior occasions and has always "walked the dock" speaking to members.² Therefore, I find that under the determined facts, the mere distribution of the handbills and the instructions to place the literature in the break-room did not violate the *Rules*.

²If, however, the facts had revealed that Mr. McCall had spent additional time actually discussing the merits of the candidates to members with whom he spoke, or if he had walked out of his way to distribute handbills to every member working at the barn, such activity might well no longer be considered incidental.

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Accordingly, Mr Draeger's protest is DENIED

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/mca

cc Frederick B. Lacey, Independent Administrator
Michael D. Gordon, Regional Coordinator