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Election Officer

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March 15, 1991

**VIA UPS OVERNIGHT**

Douglas Frechin  
7515 181st Place, S W  
Edwards, Washington, 98020

Yellow Freight Systems, Inc  
Attn Frank J Zitnik  
6203 215th Street, S W  
Mt Lake, Washington 98043

Allen McNaughton  
Secretary-Treasurer  
IBT Local 174  
553 John Street  
Seattle, Washington 98109

**Re: Election Office Case No. P-560-LU174-PNW**

Gentlemen

Douglas Frechin filed a pre-election protest pursuant to Article XI, Section 1 of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") The protester alleges that on or about February 18, 1991 he received a disciplinary warning letter from his employer, Yellow Freight Systems, Inc based on the company's contention that on February 12, 1991, while delivering freight to a customer, he discussed Union business and distributed Union literature<sup>1</sup> The letter stated that he used company time, instead of personal time to discuss Union business, and he used company equipment to deliver campaign material Complainant further alleges that at the investigatory meeting, which preceded the warning letter, he was told by Frank Zitnik, his supervisor, that "when you work for Yellow, from the time you punch in, until the time you go home, you'll not discuss Union business or pass out literature " The protester asserts that in response to that statement, he asked, "what about when I'm on break or lunch-time, or talking to other Teamsters who are on break, or in a non-work area, such as their lunch-room?" Mr Zitnik replied, "Not even then "

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<sup>1</sup>While not further identified in the warning letter, the literature was clearly campaign literature

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An investigation of this protest was conducted by Adjunct Regional Coordinator Patty Warren. Frechin stated that on February 12, 1991, he had occasion to make a delivery at Kiewit Construction. A problem arose regarding the collection of payment for the delivery and phone calls were made to the Yellow Freight dispatcher by Frechin and by a Kiewit employee, later identified as Tom Burmeister.

Frechin further stated that after the calls were completed, he spoke with Mr. Burmeister and asked if there were any Teamsters working at Kiewit. Mr. Burmeister said he was a Teamster and began complaining about the Union. Frechin asked if there were any other Teamsters working there to which Mr. Burmeister replied in the negative and then left. Frechin then returned to his truck, picked up a copy of some campaign literature and left it in the lunchroom of Kiewit while looking for a bathroom.

Several days later Frechin was approached by his terminal manager, Frank Zitnik, and was advised that an investigatory meeting would be scheduled based on a call Zitnik had received from Kiewit. The meeting was held on the following day at which time Zitnik stated that he received a call from Kiewit complaining that Frechin was talking about the Union with its employee and had left literature at Kiewit after being told not to do so. Mr. Zitnik further stated that if Kiewit had informed him that Frechin or any other Yellow Freight driver spoke with its employee concerning the election again they would refuse to accept freight from Yellow.

Frechin stated that Zitnik would not listen to his version of the events and told him he could not campaign from the time he punched in until he punched out. Zitnik also stated that customers did not want to hear "Union talk" and if this conduct continued Yellow Freight might lose customers. Zitnik also advised Frechin that he could not use the company vehicle to transport Union materials. Frechin stated that Zitnik told him he could not campaign on non-work time or speak to another employee on non-work time. A warning letter was issued following the meeting which stated that Mr. Frechin used company time to discuss Union business and used Yellow Freight equipment to distribute Union literature.

Ron Rommel, Business Agent of Local 174, was present at the investigatory meeting described above. He agrees with Complainant's statement as to the events of the meeting except he states that Mr. Zitnik told Complainant that when he is working in a Yellow Freight truck he is not doing Union business. Zitnik also told Frechin that he could not campaign during non-work time in non-work areas at customer premises.

The employer, by its counsel, has advised the Election Officer that Mr. Frechin was properly disciplined due to a customer complaint. The employer emphasizes that the complaint of the customer was mainly based on Mr. Frechin's disregard of the wishes of the Teamster employee of the customer regarding distribution of campaign materials. The employer also notes that its policies allow solicitation and distribution of literature on non-work time in non-work areas. The position of the employer is that Mr. Frechin engaged in campaigning on company time at the premises of a customer which may have adverse consequences to the business of the employer.

Mr Frechin acknowledges that he was in fact passing out campaign literature at the time and place for which he received the warning letter, but that the severity of the discipline of a warning letter, instead of an oral reprimand, combined with Mr Zitnik's statements made at the investigatory meeting, violates his campaigning rights under the *Rules*

Yellow Freight has forwarded to the Election Office a written copy of its policy on the "distribution of literature and solicitations " In pertinent part, the policy prohibits distribution of literature in any working area at any time or in non-work areas during working times It does not prohibit distribution of literature or the discussion of intra-union affairs in non-work areas, such as parking lots, restrooms, break-rooms and terminal entrances or exits during non-work times such as lunch or break periods The employer has assured the Election Officer that its policy has been distributed to all its supervisors The employer also has advised that its policy extends to the transportation of literature in company vehicles There is no evidence to suggest that this policy has not been enforced uniformly and Complainant does not allege that these rules are discriminatorily enforced

Article VIII, Section 10(d) of the *Rules* provide that "no restrictions shall be placed upon candidates or member's pre-existing rights to solicit support, distribute leaflets or literature, conduct campaign rallies, hold fund-raising events or engage in similar activities on employer or Union premises " Thus, in accord with the Yellow Freight policy and the *Rules*, no restrictions can be placed, by way of prohibition or punishment, on members who engage in campaigning activities which are otherwise not disruptive in non-work areas on break-times at Yellow Freight As to the facts of the instant protest, Complainant admits that he was in violation of the Yellow Freight policy by distributing literature on work-time. Therefore disciplinary action taken by Yellow Freight does not violate the *Rules*.<sup>2</sup> Accordingly, the protest is DENIED.

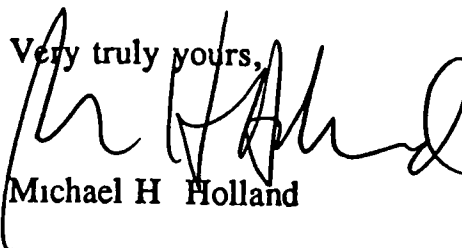
If any interested party is not satisfied with this determination, they may request a hearing before the Independent Administrator within twenty-four (24) hours of their receipt of this letter The parties are reminded that, absent extraordinary circumstances, no party may rely upon evidence that was not 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

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<sup>2</sup>Since no violation of the *Rules* has been found to exist, the Election Officer does not determine whether an oral warning, rather than written, should have been given This is not to say that the protester may not have other remedies as to this discipline

Douglas Frechin  
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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 M Mrak, Regional Coordinator

IN RE:

DOUGLAS FRECHIN

Complainant,

and

YELLOW FREIGHT SYSTEMS, INC.,

and

IBT LOCAL UNION NO. 174

Respondent.

91 - Elec. App. - 115 (SA)

DECISION OF THE  
INDEPENDENT ADMINISTRATOR

This matter arises out of an appeal from a decision of the Election Officer in Case No. [REDACTED]. A hearing was held before me by way of telephone conference at which the following persons were heard: the complainant, Douglas Frechin; Ron Sandhaus, an attorney representing Yellow Freight Systems, Inc.; Bob Rommel, a Business Agent from Local 174; Rod Mandenhall, an Administrative Assistant from the Local; John Sullivan on behalf of the Election Officer; and Regional Coordinators, Allan McNaughton and Patty Warren. Post-hearing submissions were also received.

The relevant facts underlying this protest are detailed in the Election Officer's Summary as follows:

It is not disputed that on February 12, 1991, Mr. Frechin, a truck driver employed by Yellow Freight, was making a delivery to Kiewit Construction Company, a customer of Yellow Freight. During the course of his duties he engaged Tom Burmeister, a Kiewit employee and fellow member of the Local, in conversation about the

union and about Teamsters for a Democratic Union. After Mr. Burmeister indicated his lack of interest and told Mr. Frechin that there were no other Teamster members at Kiewit, Mr. Frechin nonetheless returned to his truck to retrieve a copy of union literature, including campaign literature. He returned to the building, found the lunchroom, and left the literature there.

According to Yellow Freight, Kiewit subsequently complained about Mr. Frechin's use of company time and Kiewit's premises for union-related purposes and threatened to take its business elsewhere if drivers persisted in such activity.

Mr. Frechin's supervisor, Frank J. Zitnik, conducted an investigatory meeting in which he told Mr. Frechin that he was not to engage in union-related business while he was "on the clock," even during his breaks and lunch hours.

Yellow Freight's no-distribution/no-solicitation policy, however, does not prohibit campaign activity during non-work time in non-work areas.

On or about February 18, 1991, Mr. Zitnik sent Mr. Frechin a written "warning letter" for "abuse of company time." Mr. Frechin was cited for discussing union business "after the customer made it clear he did not want to discuss it," and for using company time for distributing campaign literature in the customer's facility. In addition, Mr. Zitnik warned Mr. Frechin that Yellow Freight's equipment was not to be used for delivery of union-related material. The letter closed with the warning that "[a]ny further incidents of this nature will result in discharge."

Mr. Frechin, who has worked for Yellow Freight for five years without any disciplinary incident, contended that the written letter of warning is overly severe for a first offense of this type. In addition, Mr. Frechin emphasized that the only reason he passed through the lunch room was to use the bathroom and the time it took him to place the literature on the lunch room table was "incidental." Mr. Frechin also explained that his exchange with

Mr. Burmeister was extremely brief. After Mr. Burmeister indicated to him that he had no interest in discussing Teamster affairs, Mr. Frechin immediately terminated his conversation with Mr. Burmeister. Thus, Mr. Frechin argued that this exchange was also "incidental."

The Election Officer has confirmed that employees and non-employees have the right to campaign on an employer's property in accordance with established law. This right has been affirmed by the Independent Administrator. See In Re: McGinnis, 91 - Elec. App. - 43 (January 23, 1991). The Election Officer has also determined that employees who regularly work on the premises of another employer (such as delivery employees) have the same rights as the employees of the host employer because they are rightfully brought onto the employer's property in the course of their duties. These rights were also affirmed by the Independent Administrator. See In Re: Teller, 91 - Elec. App. - 92 (SA) (March 12, 1991).

As the Election Officer further clarifies in his Summary:

[T]hese rights generally do not extend to engaging in campaign activity while on work time and in work areas. Nor do they extend to engaging in campaign activity on a customer's premises against the wishes of the customer.

Against this background, the Election Officer concluded:

Accordingly, the conduct admittedly engaged in by Mr. Frechin is not protected under the Election Rules, and the employer's imposition of discipline is not prohibited by the Rules.

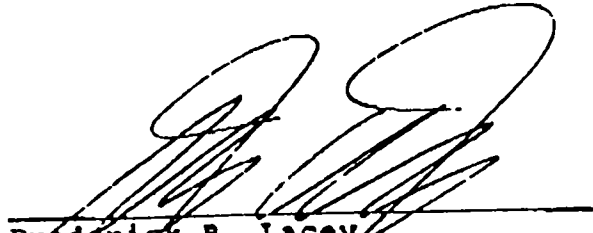
Mr. Frechin contends, however, that the imposition of a written warning, especially one that carries the threat of discharge for future occurrences, is



sufficiently severe to warrant the Election Officer's intervention. While it is true as a general proposition that disciplinary measures taken against election-related conduct might be so egregiously disproportional so as to violate the Rules this does not appear to be such a case.

Mr. Frechin has essentially conceded that some measure of discipline was warranted for his abuse of company time on the premises of a customer. While it may have been reasonable, as Mr. Frechin suggests, to impose an oral reprimand for this first, relatively minor infraction, use of a written warning does not appear draconian. From the company's perspective, the amount of company time was not substantial, but the misuse occurred on a customer's premises and risked the customer's good will. Accordingly, Yellow Freight did not exceed the bounds of reasonableness by giving a written warning.

For the reasons expressed by the Election Officer, his ruling is affirmed in all respects.



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

Dated: April 1, 1991