



OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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Election Officer

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April 9, 1991

VIA UPS OVERNIGHT

Steve MacDonald
975 Hillview Dr
Dixon, CA 95620

Casey Sawyer
Secretary-Treasurer
IBT Local Union 490
445 Nebraska St
Vallejo, CA 94590

Frank Friedman
Lucky Stores, Inc
Vacaville Dist Center
700 Crocker Drive
Vacaville, CA 95688

George Saavedra
845 Thetford Pl
Fairfield, CA 94533

Re: Election Office Case No. P-666-LU490-CSF

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*") In their protest, Steve McDonald and George Saavedra, candidates for 1991 IBT International Union Convention delegate for Local Union 490, allege that Local 490 Secretary-Treasurer Casey Sawyer and Local 490 Business Agent Carlos Borba, both also candidates for delegate from Local 490, were permitted by Lucky Stores, an employer of Local 490 members, to campaign in work areas during work time while Mr. McDonald and Mr. Saavedra and their supporters were denied such opportunity. Specifically, the protest alleges that on March 12, 1991, Sawyer and Borba campaigned and passed out campaign literature on the warehouse shop floor at Lucky for several hours.¹

¹Local 490's delegate election has already occurred. Messrs. MacDonald and Saavedra were both winning candidates in such election. The protestors, Steve MacDonald and George Saavedra, do not allege, nor does the Election Officer find, that the above protest "may have affected the outcome" within the meaning of Article XI of the *Rules*.

It is undisputed that both Sawyer and Borba were at the Vacaville distribution center of Lucky Stores on March 12, 1991. It is also undisputed that they engaged in campaign activities among the Local 490 members employed there in non-work areas during non-work times. It is also undisputed that McDonald and Saavedra and their supporters have also engaged in campaign activities among Local 490 members employed at Lucky in non-work areas during non-work time.

In addition, Sawyer and Borba admit that they spent approximately four hours on the "shop floor" at Lucky on March 12, 1991. They deny that they engaged in any campaign activity during such period. Rather, they contend that the purpose of their discussion with the Local 490 members was to deal with such members' problems and particularly to obtain their input regarding a partial move of the Vacaville General Merchandise Department to another Lucky location. A negotiating meeting was scheduled between Local 490 and Lucky for March 14, 1991 to discuss this move. Sawyer and Borba contend that they were on the shop floor on March 12, 1991 in order to ascertain the sentiments of the membership prior to such meeting.

Neither McDonald nor Saavedra were able to produce any evidence that either Sawyer or Borba engaged in campaign activities while they were in a work area of the Lucky facility. They were unable to present any evidence indicating that Sawyer or Borba campaigned among Local 490 members while such members were working. They stated that John Hamer would be able to provide such evidence.

Mr. John Hamer, a Local 490 member working at Lucky's Vacaville Distribution Center, was thus interviewed in reference to this protest. Mr. Hamer was working at the Lucky's facility on March 12, 1991, and observed Mr. Borba and Mr. Sawyer as they walked through the plant talking to members. Mr. Hamer stated that although he could clearly observe Mr. Sawyer and Mr. Borba, he did not see them distributing any campaign literature while on the shop floor. Mr. Hamer was also able to hear Mr. Sawyer and Mr. Borba speaking to members, but he stated that he did not hear them making any statements in reference to the campaign. Mr. Hamer further stated that he polled several other employees to see if Sawyer or Borba had made any statements to them about the campaign. Everyone he spoke to stated that neither Sawyer or Borba referred to the campaign or their candidacies in any way.

Union officers and business agents are entitled, consistent with the provisions of the collective bargaining agreement, to talk to members in work areas and during such members' working hours. As long as the officers and business agents do not use such opportunity for campaigning purposes, the employer is not obligated to give members who are not officers or business agents similar consideration.

In this case, there is no evidence that Sawyer or Borba misused their right to talk to Local 490 members employed at Lucky's in work areas during such members' work time, there is no evidence that they engaged in campaigning activities during such time. Therefore, this protest is DENIED.

Steve MacDonald
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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
Donald E. Twohey, Regional Coordinator