



OFFICE OF THE ELECTION OFFICER  
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
25 Louisiana Avenue, NW  
Washington, DC 20001

Michael H. Holland  
Election Officer

(202) 624-8778  
1-800-828-6496  
Fax (202) 624-8792

June 17, 1991

**VIA UPS OVERNIGHT DELIVERY**

William Fleeger  
4151 Bathel  
Houston, TX 77092

Richard Hammond  
President  
IBT Local Union 988  
3100 Katy Freeway  
Houston, TX 77270

Houston Dairy  
Tom Kelleher  
General Manager  
701 Waugh  
Houston, TX 77019

**Re: Election Office Case No. P-732-LU988-SOU**

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 Mr. William Fleeger, a member of Local Union 988 in Houston, Texas. Mr. Fleeger was an unsuccessful candidate in Local 988's delegate election which was held on March 28, 1991. In his protest Mr. Fleeger alleges that his employer, Houston Dairy, has engaged in various acts of retaliation against him and other members of his bargaining unit because of his participation in Local 988's delegate election and because of Mr. Fleeger's prior successful protest against Houston Dairy. Mr. Fleeger alleges that various acts committed by his employer, Houston Dairy, have violated his rights to engage in political and campaigning activities in accordance with Article VIII, § 10 of the *Rules*. Specifically, Mr. Fleeger alleges that his employer, Houston Dairy, has engaged in the six following acts of retaliation:

1. Implementation of New Policy Restricting Members' Use of Telephone in the Boiler Room Area

- 2 Houston Dairy's Decision to Search the Employee Lockers on February 14, 1991
- 3 Mr Fleeger's Suspension from Employment Without Pay for Protesting the February 14, 1991 Locker Search
- 4 Houston Dairy's Restriction of the Employees' Use of the Boiler Break Room Area and the Removal of the Coffee Pot from the Boiler Break Room Area
- 5 Houston Dairy's Issuance of a Warning Letter to Mr Fleeger Declaring that Mr Fleeger Had Campaigned on Company Time
- 6 The Company's Decision to Assign Mr Fleeger to Work Outside the Boiler Room Area

Each of Mr Fleeger's allegations will be discussed in separately numbered paragraphs below

**I Background Information**

Mr Fleeger is a member of Local 988 in Houston, Texas and has been employed by Houston Dairy for nine years Mr Fleeger is employed as an engineer in the boiler room area and has been assigned to that position for the entire nine years that he has been employed by the company Mr Fleeger has also served as a Union steward from 1987 to 1989 In 1989 he resigned from his position as Union steward As stated earlier, Mr. Fleeger was an unsuccessful candidate for delegate in Local 988's delegate election He campaigned vigorously in support of his candidacy and distributed literature and discussed his campaign with members at the Houston Dairy facility

**II Alleged Retaliation Concerning Change in Phone Use Privileges by Bargaining Unit Members**

Mr Fleeger alleges that Houston Dairy implemented a more restrictive policy concerning employee use of the telephone in the boiler room area after Mr Fleeger became active in the delegate election and after he filed pre-election protests alleging various *Rules* violations by his employer Mr Fleeger claims that the company's motive for changing the phone policy was to retaliate against him in the exercise of his political rights under Article VIII of the *Rules* Mr Larry Daves, Election Officer Regional Coordinator, conducted an investigation into Mr Fleeger's allegations The investigation

William Fleeger

Page 3

disclosed the following facts

On or about March 13, 1991 the company implemented a policy which had the effect of restricting the use of personal and long distance calls from the pay phone in the boiler shop area. The company's new policy provides that boiler room employees are permitted to call their home as well as various emergency and work-related numbers, but that employees may no longer use the phone for long distance calls, or general personal calls. The company's new policy affected all the phones in the plant, some of which had long-distance capability. The phone in the boiler room area did not have long distance capability, but employees were previously permitted to use the phone to make personal local calls.

Mr. Kelleher, the General Manager for Houston Dairy, explained that it changed its phone policy due to the fact that in recent months they had received large bills for unauthorized long distance calls including some calls to 900 numbers. Mr. Kelleher further stated that for several months the company had been in contact with various long distance phone companies about the feasibility of placing a blocking device on the phone to restrict unauthorized personal calls, long distance and 900 calls. Kelleher states that as soon as Houston Dairy discovered a telephone company with the requisite capabilities, it ordered the new service, and implemented its new policy.

Prior to the implementation of its new phone policy, Mr. Kelleher contacted Local 988 officials to inquire about which numbers members should remain permitted to make. The Local responded that members should be permitted to call their families, contact emergency services and any other work-related calls. The Local did not request that members be given permission to call the Local Union.

During the interview conducted by Larry Daves, the Regional Coordinator, Mr. Fleeger alleged that the company's action was motivated entirely by a desire to retaliate against him for his campaigning and protest related activities. Mr. Fleeger disputes the company's explanation for its institution of the new phone policy. Mr. Fleeger correctly notes that the boiler break room phone was always a restricted phone. Employees could not have made long distance or 900 calls on the phone because there was already a toll call block on the boiler room phone. Fleeger argues that IBT members employed at Houston Dairy should at least be able to use the phone to all the Local Union offices. Mr. Fleeger conceded, as stated by the company, that he and other employees had access to pay phones in the facility and that the new policy did not restrict his right to make long distance calls during non-work times on phones other than the phone in the boiler room area.

The investigation disclosed that Houston Dairy was genuinely concerned by reducing business costs associated with employees using the boiler room phone for long distance calls. Pursuant to the investigation conducted by the Election Officer, the company submitted documents showing that as recently as a month ago the company had been billed \$100 for a four minute call to a 900 number. The company was not able to determine which employee had placed the call, thus, the company was liable for the cost of the phone call. The facts also established that Houston Dairy wanted to restrict employees' use of the phones for personal calls. In addition, the evidence revealed that Houston Dairy had been studying the possibility of changing to a more restrictive phone system, providing for a block on long distance and unauthorized personal calls for at least three years.

The policy implemented by the company continues to permit Mr. Fleeger as well as other employees working in the boiler room area to contact family members, emergency personnel, and to conduct any other business related matters pertaining to the orderly operation of the boiler room. Moreover, both Mr. Fleeger and management representatives agree that Mr. Fleeger has access to other phones in the plant facility, including pay phones enabling him to make long distance phone calls if he so desired.

The investigation did not disclose any information to support Mr. Fleeger's allegations that the company's change in policy with respect to employees' use of the phone in the boiler area was motivated by discriminatory intent. The change in Houston Dairy's phone policy was plant-wide and appears to be motivated by the company's concern over controlling costs and limited authorized personal calls during work-time. Since there is insufficient evidence to support Mr. Fleeger's allegations of retaliatory action on the part of his employer, the protest with respect to the change in policy concerning the use of the phone in the boiler room area is DENIED<sup>1</sup>. However, the employer has agreed to amend its policy to permit boiler room employees to use the phone to call Local Union 988, a request specifically advanced by Mr. Fleeger. Accordingly that aspect of the protest is RESOLVED.

---

<sup>1</sup>Mr. Fleeger has also discussed the possibility of filing a grievance over the company's change in its phone policy. The Election Officer specifically expresses no opinion on the merits of such a grievance, and does not intend its decision in the protest to have any bearing on the question of whether the company's change in its phone policy violates the parties' collective bargaining agreement.

### III Houston Dairy's Decision to Search Employees' Lockers

On January 14, 1991 the company notified the employees at Houston Dairy that employees were required to notify the company of the lock combinations for their employee lockers. Management officials stated that the basis for the company's directive was that it had received information that some employees were concealing weapons in their lockers, which was contrary to company rules. Approximately two weeks later, the company posted a second notice on all employee lockers reiterating the information contained in the first notice, and further stating that any employee not responding prior to February 4, 1991 would have his or her locker opened by security personnel and would have the contents of the lockers inspected. On February 15, 1991 the company proceeded to remove all locks and contents from company lockers belonging to employees who did not respond to the second notice. Pursuant to their search of the lockers, company officials discovered an instrument in one employee's locker which could arguably be used as a weapon. The company confiscated the article and turned it over to local authorities.

Mr. Fleeger alleges that the company's decision to search the lockers was retaliatory in nature. Mr. Daves conducted an investigation into Mr. Fleeger's allegation. The investigation did not disclose any facts to support Mr. Fleeger's allegations. Rather, the investigation disclosed that the lockers constituted company property and that Houston Dairy had a legitimate interest in insuring that employees did not conceal weapons or other dangerous devices in the lockers.

Moreover, the question of whether or not the company had a right to search the lockers is addressed in the collective bargaining agreement between Houston Dairy and Local 988. Accordingly, the proper forum for determining whether the company's actions were permitted under the terms of the collective bargaining agreement is the grievance and arbitration procedures provided for in the labor contract. Finally, since there is no evidence to support Mr. Fleeger's claim of retaliatory action, and because the issue concerning employee lockers is squarely contemplated within the provisions of the collective bargaining agreement, the Election Officer declines to find a violation in reference to the employer search of the employee lockers. Accordingly, the protest concerning the locker search is DENIED.

### IV Mr. Fleeger's Suspension for Protesting the Locker Search

Mr. Fleeger also alleges that Houston Dairy's decision to suspend him for five days was politically motivated and was retaliatory in nature. The investigation disclosed the following facts:

Mr Fleeger was present at the plant on February 15, 1991 when management personnel and plant security conducted the locker search. After the search was completed, Mr Fleeger approached the Personnel Manager and Safety Director, Ole Solemaas. According to Mr Solemaas, Mr Fleeger questioned the company's authority to conduct the search and argued that employees had a right to be notified. When Mr Solemaas responded that the Union steward was present, Fleeger allegedly threatened that he would "shoot Solemaas' ass" and that "he was a bad motherfucker." Solemaas further states that when he asked Fleeger to leave, Fleeger refused, saying that he would stay and drink his coffee. Solemaas states that he then told Fleeger to get his "bad ass" out of his office, whereby Fleeger raised his voice and told Solemaas to step outside and he would "show him how bad he was."

Mr Fleeger was questioned about Mr Solemaas' allegation and he averred that when Solemaas told him to leave his office he responded by asking if he could just have one sip of coffee. Fleeger further stated that after Solemaas began yelling at him, he yelled back, saying, "yeah, I can be bad, if I am pushed, I could even shoot a man." Fleeger states that he has not threatening Solemaas but simply telling him that if someone tried to break into his home, he would shoot to defend himself. Fleeger also recalls that he said to Solemaas, "you seem like you want to fight, do you want to fight?"

The evidence establishes that Fleeger was disciplined because the company viewed his conduct on February 15, 1991 as insubordinate and threatening. The facts establish that management personnel had a basis for believing that Fleeger physically challenged Solemaas and provoked an argument over the locker search. In fact, Fleeger himself admitted that he lost his temper after Mr Solemaas yelled at him. The investigation did not disclose sufficient facts to support Fleeger's view that his suspension was discriminatorily motivated. Accordingly, the protest is DENIED.<sup>2</sup>

V Employer's Restriction of Break Room Area and Removal of Coffee Pot from Break Room Area

Mr Fleeger also protests the company's decision to restrict employee access to the break room in the boiler room and to remove the coffee pot from the boiler room area.

---

<sup>2</sup>The Election Officer specifically declines to express any opinion on whether Fleeger's discharge violated the collective bargaining agreement. Absent evidence of retaliatory motive, the Election Officer has no jurisdiction to determine whether Fleeger's suspension violated the labor contract.

William Fleeger

Page 7

Mr Fleeger works as an engineer in the boiler area of the plant. The boiler room are is composed of three rooms, one of which has been used as break room area by boiler engineers and other employees of the plant, the other two rooms contain the actual boilers, engines and compressors

On February 1, 1991, Mr Kelleher issued a reprimand letter to Mr Fleeger, accusing Mr Fleeger of campaigning in a work-area of the plant. The reprimand letter referred to a conversation that Mr Fleeger had with a fellow employee in the boiler break room area. That reprimand letter was the subject of Election Office Case No P-436-LU988-SOU and is further discussed in Section VII below. Mr Fleeger filed a protest over the issuance of the reprimand letter, maintaining that he was on lunch-break at the time that Kelleher observed him and that he was in a non-work area of the plant, i e , the break room in the boiler shop area. The Election Officer agreed with Mr Fleeger and granted the protest.

The Election Officer specifically rejected Kelleher's argument that the boiler room area, although perhaps available as a non-work area for Fleeger, was not available to other non-boiler room employees. The Election Officer held that

[u]nder the facts in this case, management clearly condoned and on a large scale even participated in the use of the boiler room as a general non-work area. I do not question Kelleher's contention that he personally was unaware of the practice. However, under the circumstances of this case, it is absolutely clear that management as a whole was aware of this long standing and extensive practice of utilizing the boiler room as a general break room for and by employees other than and in addition to the employees authorized to be in the boiler room. Thus, the boiler room must be considered a non-work area. Under the *Rules*, Fleeger therefore has the right to campaign in the boiler room.

In re Fleeger and Houston Dairy (P-436-LU988-SOU), March 5, 1991, p 5

The Election Officer's decision was based on evidence obtained through numerous interviews with Houston Dairy employees and supervisory personnel. The investigation also disclosed that there has been a coffee pot in the room for several years and that individuals from all over the plant used the coffee pot and the break room table for lunch breaks. A number of employees interviewed by the Election Officer representative in that



William Fleeger

Page 8

investigation as well as the investigation of this protest confirmed the fact that, although technically one needed a key to get into the boiler room, the door was always propped open with a dolly permitting employees and supervisory personnel to enter and exit the area freely

In April of 1991, Tom Kelleher, Houston Dairy's General Manager, informed employees that they could no longer use the boiler room as an employee break room area. Previous to that time Mr Fleeger had filed a protest alleging that the company had restricted employee access to the boiler room area for the purpose of restricting his right to campaign among Houston Dairy members. Mr Fleeger further claims that the boiler room area has been used as an employee break room for several years. Conversely, Mr Kelleher claims on behalf of the company that top level management was not aware that employees were using the area as a break room and that such use of the area compromises the safety of the plant and will therefore not be permitted.

Mr Kelleher contests the members' statements with respect to the employee use of the boiler room area and the use of the coffee pot. Mr Kelleher states that he was not aware that employees had ever had unrestricted access to the boiler room area. Kelleher further states that the entrance area in the boiler room is not a safe area for employees to congregate in because it has a workbench and a vise and some voltage wires as well as small jars of chemicals used to test the water in the boiler.

The investigation disclosed that the boiler room area is divided into three sections, or rooms. The first section, which is the entrance area, contains a table, chairs, coffee pot, workbench and a vise, as well as some small bottles of chemicals. Mr Fleeger and other employees stated, and the Election Officer finds, that the workbench and tables were routinely used by employees for lunch breaks. The second area in the boiler room is the actual boiler area where two large boilers are located. The third area of the boiler room contains the engines and compressors.

The Election Officer's initial and subsequent investigation demonstrated that the boiler room area was considered a non-work area for many years. The investigation further revealed that Kelleher's concerns over the hazardous nature of the boiler break room area are unsupported by any convincing evidence. Thus, Mr Kelleher claims with respect to the dangers posed by the employees use of the boiler break room are unpersuasive and hereby rejected. Rather, the investigation showed that the employers decision to restrict the use of this area only occurred after Mr Fleeger filed a protest alleging a violation of his political rights under the *Rules*, and after the protest was granted by the Election Officer.

William Fleeger

Page 9

I conclude that company's change in policy with respect to the boiler room area and with respect to the removal of the coffee pot was retaliatory in nature. Accordingly, Mr Fleeger's protest with respect to this issue is GRANTED

I also note that Houston's Dairy's continued refusal to permit access to the break room and the company's removal of the coffee pot is inconsistent with the Election Officer's decision in Election Office Case No P-436-LU988-SOU. Therefore, this decision shall serve as a formal notice to Houston Dairy to CEASE AND DESIST from restricting access to the break room in the boiler room area and to replace the coffee pot which was removed from the table in the area. Failure to comply with this order within forty-eight (48) hours shall result in this matter being referred to the Office of the United States Attorney for the initiation of contempt proceedings.

#### VII Issuance of Warning Letter

Mr Fleeger also protests Houston Dairy's refusal to comply with the Election Officer's decision requiring the rescission of a warning letter placed in Mr Fleeger's personnel file. The investigation revealed that on February 1, 1991, Tom Kelleher, issued a warning letter to Mr Fleeger accusing Mr Fleeger of campaigning on company time. Mr Fleeger filed a protest with the Election Officer over the issuance of the warning letter. In his protest, Mr Fleeger alleges that the warning letter was retaliatory in nature and restricted his political and campaigning rights under Article VIII, § 10 of the Rules. On March 5, 1991, the Election Officer granted Mr Fleeger's protest and ordered that Houston Dairy remove the letter from Mr Fleeger's personnel file within five days of the receipt of the Election Officer's decision. (See Election Office Case No P-436-LU988-SOU )

In this protest, Mr Fleeger claims that the company has refused to comply with the mandate ordered by the Election Officer in Case No P-436-LU988-SOU. Specifically, Fleeger alleges that Mr Kelleher has refused to remove the letter from his personnel file. Upon receipt of Mr Fleeger's protest in this case, the Election Officer contacted the United States Attorney's Office for the Southern District of New York to inform the United States Attorney that Houston Dairy was refusing to comply with the remedy imposed by the Election Officer in Case No P-436-LU988-SOU. On April 17, 1991, Edward Ferguson III, the Assistant United States Attorney, informed Houston Dairy that unless the company complied with the Election Officer's decision, the United States Government would initiate civil contempt proceedings. On April 19, 1991, Mr Kelleher submitted a sworn statement advising the Election Officer that Houston Dairy had complied with the Election Officer's order and that the letter had been removed. Accordingly, the protest concerning the removal of the warning letter is RESOLVED.

William Fleeger

Page 10

### VIII Fleeger's Assignment to Non-Boiler Room Work

Mr Fleeger also protests the fact that on two occasions in early April of 1991, management personnel ordered him to perform work which he had never been required to perform, once to repair four tires on a dolly and once to repair a time clock. Mr Fleeger states that the company assigned him to this type of work only to punish him for his political and protest related activities.

The investigation disclosed that Fleeger tried to repair the tires as ordered, but that he could not complete the task because the necessary spare parts were locked up, and he had no key. Fleeger states that when he told management that he could not finish the job because he was unable to obtain the parts. His supervisor asked him if he was refusing to perform the work. Fleeger replied that he was not refusing to do the work, but that he needed a key to the spare parts cabinet to complete the job. Fleeger did not complete the task and the company took no disciplinary action against him. The second unusual assignment involved repairing a time clock which was running slow. Mr Fleeger attempted to reset the clock but was unable to accomplish the task. Again, he was not disciplined in any way.

There was no adverse impact felt by Mr Fleeger from either work assignment. If the company subsequently disciplines him or uses his failure to complete these assignments against him, a new protest may be filed. Under the present circumstances, the Election Officer considers these matters moot and dismisses them on this basis.

In conclusion, the protest with respect to employee access to the break room area in the boiler shop and the right to maintain and use a coffee pot in the boiler break room is GRANTED. The remaining protests raised by Mr Fleeger are 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.

William Fleeger  
Page 11

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael H. Holland". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Michael H Holland

MHH/mjv

cc Frederick B Lacey, Independent Administrator  
Larry R Daves, Regional Coordinator