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February 18, 1991

VIA UPS OVERNIGHT

Pete Gallegos
President
Teamsters Local 420
1221 N Peck Road
South El Monte, CA 91733

Richard D. Martino
Secretary-Treasurer
Teamsters Local 420
1221 N Peck Road
S El Monte, CA 91733

Ralph Yager
1158 West Queenside Drive
Covina, CA 91722

Barry Clark
5893 Crescent Avenue
Buena Park, CA 90620

Re: Election Office Case No. P-457-LU420-CLA

Gentlemen:

Mr Gallegos 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*") In his protest, Mr Gallegos alleges that Mr. Yager violated Article VIII of the *Rules* by attending Local 420's delegate and alternate delegate nomination meeting during working hours

The investigation conducted by the Election Office disclosed the following facts: Mr Yager is a member of Local 420 and is a candidate for delegate to the 1991 IBT International Convention Local 420's nomination meeting occurred on February 4, 1991 at 8 00 p m at the Local Union Hall. Mr Ray Cordova, an Election Officer Representative attended the meeting

Mr Cordova states that Mr. Yager arrived at the meeting approximately or fifteen to twenty minutes after it began, sometime around 8 15 p m. Mr Yager was nominated as a delegate candidate and accepted the nomination during the meeting As soon as the nomination process was completed, Mr Yager quickly approached Mr Cordova and asked if he could sign the slate declaration form immediately because he was on lunch break and had to return to work shortly. Mr Yager also told Mr Cordova that his company truck was parked outside Mr. Cordova recalls that Mr.

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Yager did not engage in any type of soliciting or campaigning at the meeting and that he departed as soon as he signed his slate form, which was between approximately 8:45 p.m. and 9 00 p m

Mr. Yager is employed as a driver for Transit Mixed Company and was working the 3 00 p m to 1:00 a m. shift, Mr. Yager spends most of his time driving a company truck to various construction sites delivering materials. Mr. Yager drove to the nomination meeting in the company truck.

Transit Mixed policy provides that employees are entitled to a one half hour lunch break and two ten minute breaks during a regular eight-hour work shift. Company policy further provides that drivers on the road are not permitted to depart significantly from their delivery routes when taking lunch breaks. The Company does permit drivers to park their trucks and go into restaurants, stores and the like, but they must remain in a geographic area which is generally en route to the next delivery destination.

Pursuant to an Election Office request, Ms Denise Hughes, the dispatcher for Transit Mixed, submitted copies of Mr Yager's time sheets from February 4, 1991. The time sheets reveal that Mr Yager took a half-hour break and two ten minute breaks on February 4, 1991. Although the time sheet records are difficult to decipher, the evidence establishes that Mr. Yager was on down-time (lunch time) from 8.05 until 8 35 p m ¹ and that he took one of his ten minute break periods from 8 35 to 8 45 p.m.²

The investigation also disclosed that the nomination meeting site, which was the Local Union Hall, was directly en route to Mr. Yager's next delivery destination. Ms. Hughes states that Mr. Yager was headed for either Santa Fe or Englewood, both of which would have taken him directly by 1121 N. Peck Road in South El Monte, where the nomination meeting was occurring.

Article X, Section 1(4) of the *Rules* provides that:

No member may campaign for him/herself or for any other candidate during time that is paid for by the Union or by the Employer. However, campaigning incidental to work or regular Union business or during paid vacation, paid lunch hours, or breaks, or similar time off is not violative of the campaign contribution rule

Article X, Section 1(4) of the *Rules*, p 67.

¹The time sheet submitted by Ms. Hughes shows downtime from 22 05 to 22.35 (10 05 - 10 35 p m) but Ms Hughes states that the time sheet is in error and should have read 20 05 through 20.35 (8 05 - 8 35 p m)

²The time sheet submitted by Ms Hughes shows downtime from 22 35 through 22 45 (10 35 - 10.45 p.m). Ms. Hughes states that this was also a company error and should instead read 8.35 to 8 45 p m.

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It is clear from the facts that Mr. Yager's attendance at the nomination meeting does not constitute campaigning within the meaning of the *Rules*. There is no evidence demonstrating that Mr Yager made any campaign speech, distributed any campaign literature, or even spoke to any members about his candidacy. The mere act of attending a nomination meeting is not considered campaigning under the *Rules*. Rather participation in the nomination meeting is an essential procedural right afforded to all eligible members. Since all the evidence indicates that Mr Yager arrived at the meeting late, quickly accepted his nomination and left immediately once the nomination process was completed, and after he signed the slate declaration forms, I must reject Mr. Gallegos's assertion that Mr Yager's attendance at the meeting violated the *Rules*.

Even if I were to find that Mr Yager's attendance at the nomination meeting did constitute campaigning, I would still deny Mr Gallegos's protest because Mr. Yager attended the meeting during his lunch break. The *Rules* provide that campaigning during paid break-times does not violate the prohibitions against improper employer contributions. Mr Yager's attendance at the meeting was appropriate in that he did not depart significantly from his delivery route to attend the meeting and he used his paid break-time to attend the meeting.

Thus, even if I were to find that Mr Yager's attendance at the nomination meeting constituted campaigning, I would consider such campaigning to be not violative of Article X of the *Rules*. Accordingly, Mr Gallegos'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/ads

cc. Frederick B Lacey, Independent Administrator
Geraldine L Leshin, Regional Coordinator