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May 22, 1991

VIA UPS OVERNIGHT

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Teamsters Local 512
1210 Lane Ave , North
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Thomas G Sweat
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Signal Delivery Service Inc
10503 Busch Dr
Jacksonville, FL 32218

Re: Election Office Case No. P-734-LU512-SEC

Gentlemen

A protest was filed in accordance with Article XI, §1 of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules") by Thomas G Sweat. In his protest, Sweat protests the fact that Jerry Cook, the President of IBT Local Union 528, was appointed to serve on the Joint Area Committee which reviewed and decided Sweat's recent discharge case. Sweat alleged that Cook should not have been placed on the Area Grievance Committee because Cook harbored animosity towards Sweat due to Sweat's successful candidacy for alternate delegate on the "Rank & File Slate for Ron Carey" in Local 512's recent delegate election. Sweat alleges that Cook's participation on the Committee prevented him from receiving a fair hearing. Sweat also alleges that Lewis, the Business Agent who represented him before the Committee, failed to fairly represent him in his grievance hearing because of Sweat's political activities. An investigation was conducted by Regional Coordinator Don Williams. The investigation disclosed the following facts:

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On March 1, 1991 Thomas Sweat was discharged as an employee of Signal Delivery Service in Jacksonville, Florida. Sweat was informed that he was discharged for willfully damaging company equipment and failing to report a vehicular accident which occurred while Sweat was operating the truck. The investigation disclosed that on February 27, 1991, Sweat drove to the Sear's store in New Smyrna Beach, Florida to make a regularly scheduled delivery. When he got to the store he began to unload his truck in the dock area, alongside a Sears employee, Rob Hale. During the course of unloading the truck, the two men became involved in a discussion concerning what they considered to be the precarious condition of a concrete block wall adjacent to the loading platform. Sweat claims the wall was being suspended by reinforcement rods. At some point during this discussion Sweat volunteered to push the wall over for Hale. Hale never told Sweat that Sears had given him (Hale) permission to destroy the wall. Soon thereafter, Sweat backed his trailer into the wall and toppled it with the weight of the truck. The truck sustained some damage as a result of being backed into the wall.

Two days later on March 1, 1991, Sweat was approached by a fellow driver who reported that he had heard Sweat had an accident. At this point Sweat went to the terminal manager's office and told the dispatcher that he wished to see Signal's Terminal Manager Ron Ogelsby. Sweat met with Ogelsby and told him what happened. Ogelsby then informed Sweat that he would be discharged for his actions.

After he received his discharge letter, Sweat contacted Eugene "Red" Lewis, a Business Agent for the Local and informed him of the situation. Lewis filed a grievance on Sweat's behalf and, on March 12, 1991, the Union met with the company in an attempt to resolve the dispute. The company refused to settle the case and said that the case should be sent to the Joint Area Grievance Committee. Sweat requested and was granted another Local level meeting which was held on April 8, 1991. Lewis was present at the meeting, the purpose of this meeting was to establish that Sweat had in fact reported the incident to Ogelsby on March 1, 1991.

On April 11, 1991, the Joint Area Grievance Committee, which is the grievance panel established pursuant to Article 7 of the Collective Bargaining Agreement between Local 512 and Signal Delivery Company Inc met to hear Sweat's grievance.¹ The

¹Article 7 of the National Master Signal Delivery Service Agreement and Southeastern Area Supplemental Agreement provides that "cases not resolved in the second (2nd) step will be heard at the next scheduled meeting of the appropriate Signal Supplemental Joint Area Grievance Committee, hereafter referred to as the Supplemental Joint Area Committee. Each such Committee shall be composed of at least three (3) members, a Company Representative, a Teamster Conference Representative, and an impartial neutral arbitrator not associated with either the company or the Union to be selected mutually from a list of qualified arbitrators. [1]n all cases, the company representative(s) and the Union representative(s) will decide the cases heard. Only in the event of a deadlock will the neutral arbitrator be allowed to vote with either party to effect a majority decision thereby breaking the deadlock."

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Committee consisted of an employer representative, a union representative and an impartial Arbitrator. Sweat was represented by Local 512's Business Agent, Lewis. The employer representative on the Committee was George Houseman, Labor Director for Signal Delivery. Local 528's Secretary-Treasurer Jerry Cook was the Teamster Conference Representative.

On the day of, but prior to the convening of the Committee, Sweat claims that Lewis made derogatory comments about Ron Carey's campaign for the IBT International President. Sweat claims that Lewis also knew, and stated during such conversation, that Sweat supported Carey's campaign. Lewis and Sweat were on opposing slates in Local 512's delegate election, Sweat ran on a slate committed to Ron Carey. Sweat maintains that although this conversation occurred before Jerry Cook arrived at the meeting, the conversation caused Cook to discriminate against him in his review of Sweat's discharge case.

Sweat also alleges that Lewis discriminated against him in his representation of Sweat before the Grievance Committee. Don Williams, the Regional Coordinator interviewed Sweat in reference to this allegation. Sweat stated, however, that he believed that Lewis represented him diligently and fairly, despite the fact that Lewis opposed him in the delegate election. Sweat also stated that he thought Lewis did a good job of representing him, his only criticism was that he thought Lewis could have tried a little harder to get him reinstated. Sweat did not protest the fact that Lewis was representing him either prior to or during the proceeding.

The Regional Coordinator interviewed Cook concerning the Committee's deliberations. When Sweat initially filed his protest, he alleged that Cook voted against him. Sweat now states that Cook may well have voted for him and that the grievance was resolved by the impartial Arbitrator. Article 7 of the Collective Bargaining Agreement provides that where a dispute exists between the union representative and employer representative on the Area Grievance Committee, the dispute shall be resolved by the neutral Arbitrator.

Although the deliberations are traditionally confidential, Cook informed Williams that he in fact urged Houseman to reinstate Sweat. Cook also stated that the company was adamant in its refusal to change its position. Cook stated that the Arbitrator informed Houseman and Cook that he would only order reinstatement if Cook and Houseman both agreed that Sweat should be reinstated. When it became clear that Houseman would not agree to reinstatement, the Arbitrator concluded that Sweat's discharge should stand. Lewis also states that to the best of his knowledge Cook voted to reinstate Sweat and that Cook was unable to persuade the company or the Arbitrator. The Election Officer concludes that the Joint Area Grievance Committee deadlocked and the grievance was decided, adversely to Sweat, by the neutral Arbitrator.

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The only evidence disclosed during to the investigation demonstrates that Cook supported Sweat's request for reinstatement, and in fact urged the grievance panel to reinstate him. In addition Cook states, and there is no evidence to refute his statement, that he was not even aware of Sweat's political views, or his support for Carey.

The investigation also disclosed that Sweat did not object to Cook's participation on the grievance committee at any time prior to or during the hearing. Cook stated that it would have been easy for him to appoint someone else to sit in his place if he had been advised of Sweat's belief that Cook could not be impartial.

Finally, Cook stated that in all his years of experience serving on the Grievance Committee, he could not recall another case where an IBT member had, without authorization, used a truck to destroy company property, and then failed to report it. Cook also stated that he had asked Sweat a number of questions during the grievance hearing in an attempt to find any basis for arguing that Sweat should be reinstated, but that his position was made difficult by the fact that Sweat clearly stated that he intended to destroy the wall and by the fact that Sweat did not immediately report the accident to the Dispatcher.

Article VIII, §10 of the *Rules* provides that it is a violation of the *Rules* for the Union to act against any member because of political activity protected by the *Rules*. It is clear that Sweat's campaign activity on behalf of Ron Carey's campaign for IBT International President and campaign activity on behalf of his own campaign for alternate delegate in Local 512's delegate election is protected activity within the meaning of Article VIII, § 10 of the *Rules*. In *Thomas v UPS*, 890 F 2d 909 (7th Cir 1989) the Court of Appeals for the Seventh Circuit Court explains the role of a Union Joint Council panel member:

"The nature of a Union's role in sitting on a Joint Grievance Committee is essentially that of an arbitrator and the Union fulfills its duty of fair representation by rendering a fair and impartial decision on the merits.

A duty of impartiality and fairness will not permit Joint Grievance Committee Members to rely upon political, religious, racial, ethnic, personal, or otherwise impermissible factors when ruling upon a Grievance petition."

There is no evidence to support Sweat's claim that Cook's participation on the Committee undermined his ability to receive a fair and impartial hearing. There is no evidence to indicate that Cook's analysis of Sweat's discharge was tainted by any animosity towards Sweat's political views. Indeed, the evidence did not even demonstrate that Cook was aware of Sweat's political views. Rather, the evidence

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establishes that Sweat's actions in destroying the wall was unprecedented, and considered to be extremely serious and egregious by both the employer representative and the Arbitrator

Moreover, Sweat does not allege that Lewis's representation on his behalf was substandard or inadequate. The only evidence relied on by Sweat to prove his claim that Lewis discriminated against him is that Lewis stated before the convening of the grievance committee that "Ron Carey would be bad for the Teamsters" and that "Sweat was a Carey supporter." Absent any additional evidence, such a statement, standing alone, is insufficient to prove that Lewis failed to represent Sweat due to Sweat's political views. This is particularly true where Sweat stated that Lewis did a good job of representing him.

For the above reasons, Sweat's protest concerning Cook's participation on the Joint Area Grievance Committee and Lewis's representation of him before the Committee cannot be sustained by the Election Officer. 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 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/pjm

cc Frederick B Lacey, Independent Administrator

Donald H Williams, Regional Coordinator
1013 Smith Drive
Metairie, LA 70005
Tel 504-834-0956
Fax 504-835-4897

IN RE:

THOMAS G. SWEAT

and

R. JERRY COOK
IBT LOCAL UNION NO. 528

and

IBT LOCAL UNION NO. 512

91 - Elec. App. - 159 (SA)

DECISION OF THE
INDEPENDENT
ADMINISTRATOR

This matter arises out of an appeal from a Decision of the Election Officer in Case No. P-734-LU512-SEC. A hearing was held before me by way of telephone conference on June 5, 1991, at which the following persons were heard: Thomas Sweat, the complainant; Susan Jennik, on behalf of Mr. Sweat; John MacLennan, on behalf of Local 512; and John J. Sullivan, on behalf of the Election Officer.

Mr. Sweat was an employee of Signal Delivery Service until his discharge on March 1, 1991. Prior to his discharge, Mr. Sweat was a member of Local 512 and a Union Steward with that Local. Mr. Sweat was also a successful candidate for alternate delegate to the IBT Convention on a slate supporting Ron Carey for General President of the IBT.

The stated reason for Mr. Sweat's discharge relates back to an incident that took place on February 27, 1991. During the course

of making a regularly-scheduled delivery to a Sears store, Mr. Sweat engaged in a conversation with a Sears employee. The two men spoke about the condition of a concrete block wall adjacent to the loading platform. Mr. Sweat, apparently concerned with the safety condition of that wall, backed his Signal Delivery truck into the wall and toppled it. He did not report this incident to his supervisors at Signal Delivery at the time.

Two days later, on March 1, 1991, Mr. Sweat spoke with a fellow driver who told Mr. Sweat that he had heard about the incident. At that point, Mr. Sweat reported the incident to Ron Ogelsby, Signal Delivery's Terminal Manager. Mr. Ogelsby informed Mr. Sweat that he would be discharged for failing to report the incident properly and for willfully damaging company's equipment and private property. Later that day, Mr. Sweat received a written discharge notice.

Mr. Sweat did not protest that discharge. Mr. Sweat, however, did contact a Local Business Agent, Eugene "Red" Lewis. Mr. Lewis filed a grievance on Mr. Sweat's behalf. Eventually, the case proceeded to the Signal Supplemental Joint Area Grievance Committee, a panel established by the Collective Bargaining Agreement to hear unresolved grievances. The Committee consisted of a company representative, a representative of the Teamster Conference for that area, and a neutral arbitrator. The arbitrator is obligated to decide the grievance only if the company and the Union representative cannot decide it between themselves.

On April 11, 1991, the Joint Grievance Committee met to hear Mr. Sweat's grievance. The employer representative was George Houseman, Labor Director for Signal Delivery and the Teamster Conference representative was R. Gerry Cook, the President of IBT Local 528 in Atlanta Georgia. Mr. Cook is also a candidate for International office aligned with and supporting R. V. Durham for President and opposing Mr. Sweat's candidate, Ron Carey.

Mr. Sweat was represented at the hearing by Mr. Lewis. Mr. Lewis had run in the delegate election for Local 512 on a slate opposing Mr. Sweat's slate. Mr. Lewis lost his campaign bid.

Mr. Sweat recalled that prior to the convening of the Joint Grievance Committee, Mr. Lewis made a comment critical of Ron Carey and also observed that Mr. Sweat was a supporter of Mr. Carey. Mr. Cook was not present for these comments. It is unclear whether Mr. Houseman and the neutral arbitrator were present, but for purposes of this analysis I will assume that they were.

At the time of the hearing Mr. Sweat did not object to being represented by Mr. Lewis or to having Mr. Cook serve as the Teamster representative on the Committee.

The Joint Grievance Committee denied Mr. Sweat's grievance. Subsequently, Mr. Sweat filed a protest attacking the neutrality of the process. Mr. Sweat alleged that the Joint Grievance Committee was biased against him because of his political affiliation. Specifically, Mr. Sweat charged that Mr. Cook should not have been allowed to represent the Teamsters on the Committee because of his

political link to R. V. Durham. Still further, Mr. Lewis' impartiality was challenged.¹

As stated in In Re: Braxton, 91 - Elec. App. - 147 (SA) (May 10, 1991):

The [Rules For The IBT International Union Delegate And Officer Election (the "Election Rules")] provide all union members the right to run for office and to openly support or oppose candidates of their choice without fear of retaliatory action against them. Election Rules, Article VIII, Sec. 10. The Election Officer is empowered to protect those rights and address violations, no matter the context in which they may arise.

Thus, to the extent Mr. Sweat's exercise of his protected political rights affected the Joint Grievance Committee's decision, a violation of the Election Rules will have been established. Here, however, I cannot find that the decision of the Joint Grievance Committee was influenced by Mr. Sweat's political affiliation. As explained in the Election Officer's Summary:

Although the deliberations of the grievance committee are normally confidential, Mr. Cook divulged the positions of the respective parties to the Regional Coordinator who investigated the case. The Company representative, Mr. Houseman, adhered to the position the company adopted from the first grievance meeting forward: that Mr. Sweat's actions in wilfully destroying property and failing to report it promptly warranted discharge. Mr. Cook urged Mr. Houseman to reinstate Mr. Sweat and voted himself to sustain the grievance. Because Mr. Cook

¹ In his protest, Mr. Sweat also made certain allegations regarding Mr. Ogelsby, Signal Delivery's Terminal Manager, who apparently made the decision to discharge Mr. Sweat. To the extent Mr. Sweat is now arguing that Mr. Ogelsby's initial discharge decision of March 1, 1991, was tainted by impermissible bias, such a protest is clearly barred by the time requirements established by Article XI, Section 1.a.(1) of the Rules For The IBT International Union Delegate And Officer Election.

and Mr. Sweat deadlocked, the neutral arbitrator made the decision to uphold the discharge.


Although, Mr. Sweat challenges the credibility of Mr. Cook's statement, there is nothing in the record to suggest that Mr. Cook was not candid when he spoke with the Election Officer. Moreover, there is nothing in the record to suggest that the arbitrator was anything but neutral. Still further, there is nothing to suggest that Mr. Lewis did not fulfill his obligation in advancing Mr. Sweat's interest at the hearing.

The weakness of Mr. Sweat's position is evidenced by the fact that he continues to advance the argument that Mr. Cook was unduly influenced by political factors, when in fact Mr. Cook voted in support of Mr. Sweat.

Lastly, the decision of the Joint Grievance Committee to uphold Mr. Sweat's discharge in this instance does not appear so disproportionate as to suggest improper political motive. Mr. Sweat makes mention of certain contractual provisions governing procedures to be followed where employees are involved in accidents, and suggests that in the past employees have not been discharged for failing to report accidents. In making this argument, Mr. Sweat understates his actions here. Mr. Sweat was not involved in an "accident" per se. Mr. Sweat intentionally took his employer's truck and backed it into concrete block wall on Sear's property and toppled it. While Mr. Sweat may believe that he was motivated by safety concerns, clearly Mr. Sweat is not

authorized to use his employer's truck to dismantle private property on a whim. Moreover, Mr. Sweat denies that any damage was done to the truck. This is beside the point. Nonetheless, it is hard to believe that the truck did not suffer some damage from toppling the concrete wall.

Accordingly, the decision of the Election Officer is affirmed.



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

Dated: June 7, 1991