

OFFICE OF THE ELECTION OFFICER  
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
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Michael H. Holland  
Election Officer

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August 16, 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

Tom Marshall  
Transportation Supervisor  
Lucky Stores Inc.  
Vacaville Dist. Center  
700 Crocker Drive  
Vacaville, CA 95688

**Re: Election Office Case No. P-847-LU490-CSF**

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules") by Steve MacDonald, a member of Local Union 490. Mr. MacDonald protests the two-day suspension given him by his employer, Lucky Stores Inc. ("Lucky"). Mr. MacDonald contends that the discipline imposed should have been no greater than a written warning and that Lucky imposed a two-day suspension, in lieu of a written warning, because of its animus against Mr. MacDonald based upon his campaign activities.

Mr. MacDonald is an open and active member of the Teamsters for a Democratic Union ("TDU"). He has engaged in extensive campaign activities on behalf of General President candidate Ron Carey and candidates for International Union office aligned with Mr. Carey. He actively participated in campaigns to elect delegates and alternate delegates to the 1991 IBT International Union Convention committed to Mr. Carey. Mr. MacDonald himself was a successful delegate candidate.

Mr. MacDonald has not been hesitant to utilize the protest procedures under the *Rules*. He has filed numerous protests including a number of protests against his employer. The last protest he filed was decided on June 12, 1991; see Election Office Case No. P-

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799-LU490-CSF. The last protest he filed which implicated Lucky was decided on April 9, 1991; see Election Office Case No. P-766-LU490-CSF.

Saturday, July 27, 1991 was a scheduled workday for Mr. MacDonald. On that date Public Broadcasting Service ("PBS") was filming for a program it planned to air covering the IBT and the election process mandated by the Consent Order. The film crew sought to interview IBT members who were and had been opposed to the current officers of the IBT. Mr. MacDonald, knowing that he was scheduled to work on Saturday, attempted to find other IBT members who would be willing to be interviewed. When he was unable to do so, he interrupted his work schedule, drove the company truck to Scoto, California for the meeting with PBS and then finished his scheduled deliveries for Lucky. Mr. MacDonald scrupulously recorded on his time logs that he had taken time off for personal business. He sought no pay from the company for that period. Because of his personal excursion, Mr. MacDonald was delayed in making his last delivery and delayed in returning to the Lucky's terminal.<sup>1</sup>

Prior to attending to the television interview, Mr. MacDonald notified the dispatcher at the distribution center. The dispatcher however is not a supervisor; he like Mr. MacDonald is a bargaining unit employee represented by the IBT. There were no supervisors at the facility on Saturday, July 27, 1991 from whom Mr. MacDonald could have obtained permission to take personal time.<sup>2</sup>

Based on these facts, none of which are disputed, Lucky suspended Mr. MacDonald for two days. The basis for the suspension was:

- (a) unauthorized use of company equipment
- (b) delay of delivery to a store
- (c) taking personal time off during a scheduled workday without approval.

Company work rules specifically provide that "taking unauthorized or extended breaks or extended lunch periods, or combining breaks or lunch periods, unless authorized by your supervisor, is not permitted."

Assuming that Mr. MacDonald's campaign activities and his utilization of the protest procedures under the *Rules* is sufficient to establish a *prima facie* case of animus against him by his employer, Lucky has rebutted such evidence. It is undisputed Mr.

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<sup>1</sup> The company does not contend that the delay constituted any hardship for the Lucky store to which Mr. MacDonald was delivering.

<sup>2</sup> The company post trip auditors may have been at the distribution center during some period on Saturday, July 27, 1991. Mr. MacDonald states that he was unaware prior to his suspension that such post trip auditors could act as supervisors when no other supervisory personnel were present.

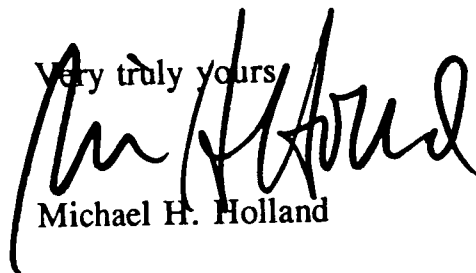
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MacDonald took an unauthorized break on July 27, 1991 and that the company work rules specifically prohibit him from so doing. It is further undisputed that Mr. MacDonald used a company vehicle, loaded at that time with company merchandise scheduled for delivery, for personal business. A specific work rule is not necessary as prerequisite for discipline being imposed for converting employer goods or property to the employee's personal use. A two-day suspension is not disproportionate for the offense regardless of Mr. MacDonald's prior work history.

In accordance with the foregoing, the Election Officer finds that the evidence presented rebuts any presumption that the discipline was imposed in retaliation for Mr. MacDonald's prior campaign activities or for his having filed protests against his employer pursuant to the *Rules*. 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/cdk

cc: Frederick B. Lacey, Independent Administrator  
Donald E. Twohey, Regional Coordinator