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LOCAL DIVISION 589
AMALGAMATED TRANSIT UNION, AFL-CIO-CLC
BOSTON CARMEN'S UNION

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May 14, 2009

Hand Delivered

Mr. Brian Donohoe
Assistant General Manager/MBTA
10 Park Plaza
Boston, MA 02116

Re: Special Order 9-56

Dear Mr. Donohoe:

I am writing this grievance at the direction of President/Business Agent Stephan MacDougall. I am writing this grievance to you because you have the authority to rescind or modify the above-noted special order. Please respond as soon as possible, no later than the time allowed to answer grievances at Step Two of the grievance procedure. If you do not have the authority to grant the grievance, please forward the grievance to the proper authority for timely response as soon as possible. The Union regards this matter as an emergency, requiring immediate response and action, because the Special Order bans possession of "electronic devices" which are so ubiquitous among the possessions of our members, that the Special Order is difficult if not impossible to follow to the letter, and the discipline set forth is so severe that, upon enforcement, employees are certain to lose pay and the MBTA lose productive services pointlessly. We request that you place the penalty aspect of the Special Order in abeyance until this grievance has been resolved.

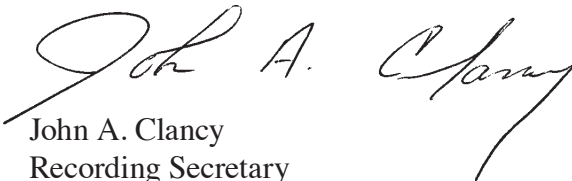
Local 589 appreciates the gravity of the recent accident which appears, at least from press reports, to have occurred while a Green Line Operator was engaged in "texting." The Union shares the goal of reassuring the public and dissuade any employee who might do such a thing, so as to make sure that service is as safe as it can be. The Union supports adopting a rule which prohibits the use or possession of an electronic device which is turned on so as to send or receive messages or provide music or other diversion to the driver. However, our members bring personal belongings of a wide variety with them to work in bags, lunch boxes, or pocketbooks, simply as a normal, natural part of everyday life. Many also have work breaks of 30 minutes to several hours, when they are unpaid, but away from home and must conduct normal, everyday affairs such as shopping, errands and so forth which are facilitated by electronic communication devices. Devices are now built as small as a thumbnail. Calculators, cell phones, i-pods, gps

transceivers and the like are made so as to be stored and transported unobtrusively and we estimate that a certain percentage of our members travel with such a device, not realizing its whereabouts, let alone using it, every day. The devices are lawful and even necessary accouterments of every day life in the modern world. Lockers are not provided to operators, and for those who do not report or leave work in a station location, would be meaningless anyway. Yet, under the Special Order, any person possessing such a device, even turned off or disabled without a battery installed, or wrapped in original heavy plastic packaging would receive at least 10 days off and, after a second offense, discharge. This rule is unreasonable under the contract, unprecedented in the industry and profoundly unfair to our members, without sound reason. Moreover, the Special Order purports to alter terms and conditions of employment which are negotiable under law, not within management's rights under the agreement, and must be bargained before implementation. There have been some informal discussions of the issue, but no meeting or proposals from either side, prior to the distribution of the Special Order.

It is extremely important that all transit operators remain keenly aware of and avoid any distractions on duty. This union would appreciate management leadership on the issue, but threats of ten days' off, costing several thousand dollars, or discharge for merely carrying a calculator inadvertently in one's back-pack constitute a poverty of leadership. Inculcating and then encouraging professionalism among operators will result in safer operation, whereas threats are insulting and prompt a favorable response only from the fearful and insecure. This grievance will be remedied by withdrawing, suspending the Special Order or at least suspending discipline under the Special Order until negotiations over the matter are complete. The Union will cooperate with prompt negotiations and speedy resolution, but if the MBTA will not agree to the interim measures, the Union will seek legal assistance to preserve the status quo in aid of arbitration and bargaining.

Thank you for your prompt and careful attention to this matter.

Sincerely,



John A. Clancy
Recording Secretary
ATU Local 589

cc: S. MacDougall
Local 589 Executive Board
D. Grabauskas, S. McCarthy, A. Barry
C. Hinton, C. Gallo