

OFFICE OF THE ELECTION ADMINISTRATOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: MICHAEL RUSCIGNO and)	Protest Decision 2001 EAD 105
THOMAS JONES,)	Issued: January 26, 2001
)	OEA Case Nos. PR092903ME and
Protestors.)	PR121402ME
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Michael Ruscigno, a member of Local 802, and Thomas Jones, a member of Local 115, each filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2000-2001 IBT International Union Delegate and Officer Election (“Rules”). The Ruscigno protest is filed against assistant IBT trustee John Schmitt and Local 115 president James Smith, and alleges that the respondents removed or pressured Local 115 members John Hooker, Thomas Jones, and Joseph Williams to resign from their position as shop stewards on September 13 and 14, 2000 because of their circulation of petitions for the Tom Leedham Rank and File Power Slate (the “Leedham slate”). The Jones protest is filed against Local 115 Trustee Ed Keyser, Smith and the University of Pennsylvania, and alleges a conspiracy to harass Jones on the job due to his support for the Leedham slate.

The respondents argue that the Ruscigno protest is untimely, that they had no knowledge that the stewards circulated Leedham petitions and/or were Leedham supporters when they asked them to resign, that the three stewards were not pressured to resign, but were instead asked to resign because of their poor performance as stewards, and that the stewards were not pressured to resign but did so willingly after being asked to do so.

The respondents also deny the allegations of the Jones protest.

Election Administrator representatives Lois Tuttle, William B. Kane and William W. Thompson II investigated the protest. We address the factual underpinnings of the two protests seriatim.

Findings of Fact

1. Jones was a first shift steward at the University of Pennsylvania (“Penn”), where he is employed as a housekeeper. Williams and Hooker were stewards nearby at Drexel University (“Drexel”). Jones was appointed steward by then Local 115 principal officer John Morris in July 1999. Subsequently, Morris was removed from office and Local 115 was placed in a trusteeship under IBT trustee Ed Keyser. Most of the local’s officers were also removed via the trusteeship. Smith was not.

Jones told our investigator that he had no problems with Smith or assistant IBT trustee Schmitt personally. He claims to have sat next to both during six negotiation

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sessions with Penn in July 2000. According to Jones, Smith asked all Local 115 stewards to pass out petitions for the Hoffa campaign in June and July 2000. Jones says he did not want to, but did so as a favor to Smith. He states that he received only 12 signatures on his petitions, and attributed this to lack of interest.

In early August 2000, Jones claims that he passed out Leedham slate petitions after work and on his lunch hour. He was doing this on the campus among people he knew and worked with.

On August 17 or 18, 2000, Jones says that Schmitt and Smith came to Penn for a meeting. At that meeting, Jones claims he discussed two matters: overtime (undisputedly a burning issue among IBT workers at Penn) and his support for the Leedham slate. Jones claimed he was seeking better handling of overtime assignments given to IBT-represented Penn workers, and represented that he was a leader in seeking and obtaining new contract language on this issue in July 2000. He also claimed that the contract language did not solve the problem, and that it was ongoing.

At this same time, Jones says that Smith and Schmitt spoke to him individually about his circulation of Leedham petitions. (Jones later claimed that Penn employee Mark Hopkins wanted to participate in this conversation as a witness but that Smith and Schmitt would not allow it.) Jones says he told the two officials that he circulated the petitions because he liked Leedham and his agenda, to which Smith responded, "Tom, if Leedham gets in, we'll have to get out." Jones says that he replied that that was "the democratic process," and that Schmitt replied, "no one is going to tell us what to do, certainly no wacko from Oregon."

Jones also claims that on September 13, 2000, Hopkins contacted Jones and told him that Smith had called him that night and told him that he was going to ask Hopkins to resign as a steward. Jones expected the same thing to happen to him, so he typed out his own letter of resignation.

Jones says that on the next night, September 14, 2000, Smith and Schmitt called him outside before a meeting, told him that his performance as a steward was "just not working out," and said they were going to ask him to resign. Jones claims that he did not know why this was called for, since the local union had just negotiated a successful contract with Penn, but that he agreed and gave them his resignation letter. Jones says that after he handed the letter to Smith and Schmitt, Smith said, "I have no problem with anything you've done down here," that Jones asked, "then why are you doing this," and that Smith said nothing, and just gave him a bewildered look.

Jones told our investigator there were several reasons he agreed to resign. First, he noted that the local appoints (rather than elects) stewards, so Smith and Schmitt had the power to terminate him anyway. In addition, he claimed that the nature of the local is to go by the leadership's wishes or feel "the brunt of it." He said that the previous secretary treasurer, John Morris, caused the local to be placed in trusteeship because he ran the local

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“like a dictator: His way or no way.” He said that in his view Smith and Schmitt were following the same path.

Jones also claimed that there is a fear within the local at Drexel of being fired over union-related matters. When our investigator asked Jones to give an example, he could only give one: “Tree.” Jones says he heard about “Tree” through Dennis DiCataldo, another shop steward who resigned around the same time. He says that “Tree,” a Leedham supporter, was rumored to have lost his job over work performance.

Jones also says that some of his friends have told him to “watch himself, they’re out to get you at all costs.” However, Jones offered no specifics to support this, or his claim that Smith and Schmitt wanted to get rid of anyone who supported Leedham.

Jones admitted that he had a copy of a petition dated August 18, 2000, seeking his termination as steward. Jones attempts to explain this petition activity against him by noting that he had passed around Leedham petitions in the days before the anti-Jones petition was circulated. Jones also states that two members who signed the petition, Ronald Washington and Carol Grimes, work on the second shift at Penn and do not interact with him. However, the Penn employee who initiated the anti-Jones petition denies any anti-Leedham motivation, and states that he drafted and circulated the petition without discussing the matter with any local union officials, and further states that almost 200 of the 500 IBT-represented Penn employees signed the petition. We credit this employee’s detailed description of the reasons behind the anti-Jones petition.

Jones admitted that his support of Leedham is not longstanding, and that he did not even know that Leedham was running until August 2000.

Jones also admitted his differing views with the administration of the local union concerning the handling of overtime matters. He says that before the ratification of the Penn contract, he thought Smith was trying to do the right thing by local union members at Penn, and believed that the contract dealt with the overtime issue fairly. Jones’ views changed after the contract was signed. Thus, he claims that in his view Smith’s behavior on the overtime issue became negative, while at the same time he noticed that Smith stopped backing him as a steward.

Significantly, Jones noticed the change in Smith’s attitude in late July, before he began his support of Leedham. He says that beginning in the end of July, Smith quit calling him.

In mid-August, one to two days after his August 10 birthday, Jones says that he and Hopkins met with Dennis DiCataldo. Jones says he had this meeting because DiCataldo is “known as the best steward in the local, and very knowledgeable about union matters.” He also says that DiCataldo told them that he thought that Smith meant to get rid of them as stewards. He told them, “That’s the way that he [Smith] plays the game.”

At this point DiCataldo told Jones about Leedham and TDU. This was the first that Jones had heard of Leedham, and based on what he heard he decided to support him. It was shortly thereafter that he began to circulate Leedham slate petitions.

Former steward Hooker is a first shift groundsman at Drexel University. He claims that in June 2000, Smith said after a stewards' meeting that the stewards needed to push the Hoffa petitions. He wanted to know why people were not signing. Hooker says he told Smith that he did not want to sign.

Hooker claims that he subsequently spoke to DiCataldo about "pushing" the Leedham petitions, and that he did so in August 2000. He thinks, but cannot show, that Smith learned of this.

On September 13, 2000, Hooker says he was in the garage at Drexel when Smith and Schmitt called him outside. They told him privately they were making changes with the stewards, starting with him. They told him he either could resign or be removed. He resigned. Hooker says no reason was offered for seeking his resignation, and that he was told only that there were "no hard feelings."

Williams has been a janitor at Drexel for three years. He works second shift, and was a steward for one and one half years. He claims that he circulated a Leedham slate petition in the break area of the basement of the university's main building one day in August 2000.

On September 13, 2000, says Williams, he was waiting to start his shift when Smith and Schmitt approached. They told him that two other stewards had resigned during the day and they were thinking about making some changes in his area. They asked him, "Would you like to resign?" He said, "Sure, if that's what you want." He was, "like, in shock."

Five minutes later, all the employees had a meeting before they started their shift. Williams says that there were already two new people in place as stewards (Richard Odebastion and Howard Malcolm). He did not think there would be two new stewards already in place when he had just resigned.

Williams says he does not understand why Smith and Schmitt wanted to replace him. He had always been a good steward and claimed there were never any complaints against him. The week after his resignation, he says that certain co-workers told him that he was doing a great job, and did not know why he was replaced. He says they told him "that's what you get for trying to come up against Mr. Hoffa." They said nothing more specific.

DiCataldo is a first shift maintenance worker at Drexel, a Leedham supporter and a member of TDU. He says that he "pushed" getting out Leedham petitions in August 2000. He also claims that in early September 2000, he heard other members arguing about who

had been circulating Leedham petitions. One of them, a steward named Chuck and a Smith hire, talked to him about this, and told DiCataldo that as a chief steward he should not be “pushing” these petitions. Because of all of this, DiCataldo called Schmitt and Smith and told them he was resigning. He said he was afraid otherwise they’d try to get him fired.

DiCataldo conceded that at some point, there was a petition by some members to remove Tom Jones as a steward. However, he claims that Smith said that Jones was not going to be removed. Nevertheless, in September 2000 Smith said there were going to be changes and asked Jones to resign.

Other witnesses offered in support of the protest also described their removal by the local union administration as stewards. Thus, on September 13, 2000, Hopkins was asked by Smith and Schmitt to resign. He claims no reason was offered, and says that he agreed to resign out of fear for his job and that of his wife. He had not circulated Leedham petitions.

Samuel Speach, Jr. also claims that he was forced to resign by Smith and Schmitt, who claimed they did so because he was incompetent. Speach said that after Mr. Morris was removed from office, Smith said that he would not change stewards. Speach says he was removed for “political reasons,” and said that by this he meant Smith and Schmitt want their own people as stewards, that is, stewards who would listen to them and share their ideas. Speach said he was not asked to resign for passing around Leedham petitions. Instead, he thinks his resignation was sought because he is part of the “old guard” at the local, that is, stewards appointed by Morris. He does not support the present administration, and believes it is corrupt.

Smith and Schmitt deny that they asked any Local 115 stewards to resign because of their support of the Leedham slate. Smith has been a local union officer since 1977, and its president since 1992. Since the trusteeship was imposed in 1999, he has continued as president but has functioned as a business agent.

Smith described numerous problems since the trusteeship was imposed. Former principal officer Morris’ supporters have been very bitter and have directed much of their bitterness at Smith. He claims to have been called “Judas,” had his car kicked, spat upon and shaken when he has been in it, and the door of his house broken in. He says he has worked hard to change attitudes and behaviors that were pervasive under Morris.

Smith is business agent for both Drexel and Penn. Penn has 500 members and Drexel 200. There have been about 8 stewards at Drexel and 7-8 at Penn.

Smith concedes that in June 2000 he asked, “the people he knew the best” (including stewards) to pass out Hoffa petitions. He claims he told them that this was not required. He says that he was “extremely pleased” with the effort on the petitions.

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Smith denies any conversation with any stewards about Leedham petitions, and denies knowing of their circulation in the local. He says that he has nothing against Leedham, that he knows him, has worked with him before (when he was Morris' assistant), and likes him. He says he cannot imagine saying anything like, "You know if Leedham gets in we'd have to leave." He wouldn't think that would happen.

Since the trusteeship, Smith says that the local union's administration has been trying to retrain stewards to be more than just "message takers" for the business agents and to be more responsive to the employees in their shops. However, he said that he found it difficult to retrain a number of the stewards.

Smith described a number of problems with the performance of Jones, Hooker and Williams. The complaints about Hooker focused on his treatment of the members, his attitude problems, and the way people felt he misused his position as steward. Workers said that he would "brush off" members' questions and would behave rudely to them. Smith felt this was reminiscent of the times when Morris was in charge and the way that he would behave toward members. In August 2000, Smith received a number of written petitions by members that specifically requested Hooker's removal.

The complaints about Williams focused on differential treatment of members, ignoring members' questions and requests. Smith said that he learned there were overtime problems about which Williams had not responded. There was a hazardous material list that wasn't in place and Mr. Williams never followed up on that.

As to Jones, Smith said that he was not a popular steward. He started to learn of various complaints about Jones in early 2000 when he aggressively walked the Penn campus to prepare for contract negotiations to take place in the summer. Sometimes Jones accompanied him on these walks. Smith found the complaints to be so numerous as to be overwhelming. He concluded that it was not in the union's best interest that they continue. Smith said that complaints revolved around Jones' attitude, the fact that he did not know members' names, and the inequitable way that he distributed overtime to members. Jones refused to follow new procedures adopted by the local union for the distribution of overtime, procedures that had been adopted in response to member complaints.

In August 2000, Jones was accused of threatening a supervisor. The employer's director of operations wanted to take action. Smith asked that the matter be held in abeyance, a request that was granted.

The following week, Smith, Schmitt, and trustee Ed Keyser decided they needed to start fresh with some new stewards. They felt this was needed in order to have an orderly implementation of the new overtime procedures, and in order to address the numerous concerns that had been voiced to Smith by local union members he met on his workplace visits and in meetings.

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Smith and Schmitt carried out this decision by speaking to the problem stewards individually. Smith said that when they went around to all of them, he told them that the reason for the resignation requests were the “overtime thing” and membership complaints. In their conversation with Hooker, Smith told him that there had been complaints of “Morris-like” behavior: brushing off members, being rude, and not answering questions. Based on these complaints, Smith asked Hooker if he would resign so they could start out anew and have confidence restored. He said fine. They all said no hard feelings and shook hands.

Then they approached Williams and told him, “No hard feelings, we think you’re a good guy, but we’ve heard the complaints and really think we need a new direction in handling them. We think that this is best for the union.” Smith says that Williams responded, “Fine, whatever is best for the union.”

When they approached Jones and asked him to resign, he said he had no problem with the request and handed in his already-prepared letter of resignation. Smith said that they also told Jones that the reason for the resignation request was the need for a fresh start on the overtime issue and membership complaints.

Smith described the dispute manifested in this protest as a “holdover from the Morris thing.” He says that International politics is not predominant in the local’s concerns, but rather the local itself and the trusteeship under which it operates.

Smith correctly noted the local union administration has the freedom to appoint and remove stewards, and enjoys this right so that it may carry out the program decided upon by the leadership. Smith stated that the Local 115 administration probably overextended the stay of the stewards that are the subject of this protest, but that the administration did so in order to give them an opportunity to work with the administration and create a sense of continuity. We credit Smith’s claim that before the resignation requests he and the other members of the administration decided that enough damage to the administration’s program had been done and that new blood in the steward ranks was needed. We base this conclusion on the ample evidence offered by the administration of problems with these stewards, and their refusal to break with the ways of the old regime.

We also credit the testimony of Smith and Schmitt that the support for the Leedham slate by these stewards, which came long after the problems with their performance had surfaced, had nothing to do with the resignation requests. The weight of the evidence, and specifically the ample evidence of poor work performance and membership complaints, some of which were voiced to our investigators by rank and file members, is more than sufficient to stand against the proximity in time between the three stewards’ Leedham campaign activity and the resignation requests. In the face of this evidence, this timing is itself insufficient to established prohibited conduct.

2. The Jones protest alleges that unnamed members of the Local 115 staff telephoned unnamed Penn representatives and sought their agreement to discipline and/or

terminate Jones because of the filing of the Ruscigno protest and his support for the Leedham slate.

In support, Jones offered the testimony of fellow Penn employee Teresa Wible, who told Jones that an anonymous source had approached her and told her that Jones had better “watch himself” because Penn building manager Jim Bean was going to “get” Jones. Wible claims she asked her anonymous source if Local 115 was behind this, and her source said, “you’re better off not knowing.” Wible refused to identify her anonymous source. She provided no other information.

Given Wible’s failure to cooperate with our investigator, we do not credit her testimony.

Analysis

The *Rules*, at Article VII, Section 11(f), prohibit “retaliation or threat of retaliation by the International Union, any subordinate body, any member of the IBT, any employer or other person or entity against a Union member, officer or employee” when directed toward the exercise of any election-related right. See *Parisi*, P1095 (December 2, 1991). A protest claiming retaliation cannot be sustained unless a threat or an actual act of retaliation is established. *Giacumbo*, P100 (October 13, 1995), *aff’d*, 95 EAM 27 (October 25, 1995).

To demonstrate retaliation, a protester must show that conduct protected by the *Rules* was a motivating factor in the decision or the conduct in dispute. The Election Administrator will not find retaliation if he concludes that the union officer or entity would have taken the same action even in the absence of the protected conduct. See *Gilmartin*, P32 (January 5, 1996), *Leal*, P51 (October 3, 1995), *aff’d*, 95 EAM 30 (October 30, 1995); *Wsol*, P95 (September 20, 1995), *aff’d*, 95 EAM 17 (October 10, 1995). Cf., *Wright Line*, 251 NLRB 1083 (1980), *enf’d*, 662 F.2d 899 (1st Cir. 1981), *cert. denied*, 455 U.S. 989 (1982).

Here, the local union is under a trusteeship imposed to cleanse the local union of what all parties agree is the harm done to the local by the prior administration. The imposition of that trusteeship has resulted in division in the local, such that the local union administration was faced with a body of shop stewards that it perceived, with some justification, to be opposed to the program of the administration, its position on overtime, and unresponsive to the membership on other issues of concern. The administration was and is, however, entitled to have its program carried out.

The record here provides substantial evidence that it was the perceived non-responsiveness of these stewards to the local union administration’s program and to the local’s membership that led to the requests for their resignation. We so conclude. We reject the claim of the protestor that the belated support of these stewards for the Leedham campaign motivated these resignation requests, even in part. The mere fact that the local

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union administration supports the Hoffa campaign and that the stewards in question engaged in some activity in support of the Leedham candidacy is, without more, insufficient to prove that these stewards would have been retained but for their support of the Leedham slate. We find instead that the performance of the stewards was perceived by the local union administration as being so deficient that their resignations would have been sought even if they had not engaged in the protected conduct on which they rely here.

For the foregoing reasons, the Ruscigno protest is DENIED. We also DENY the Jones protest, given the failure of Jones' witness Teresa Wible to cooperate with our investigator.

Any interested party not satisfied with this determination may request a hearing before the Election Appeals Master within two (2) working days of receipt of this decision. The parties are reminded that, absent extraordinary circumstances, no party may rely upon evidence that was not presented to the Office of the Election Administrator in any such appeal. Requests for a hearing shall be made in writing, shall specify the basis for the appeal, and shall be served upon:

Kenneth Conboy
Election Appeals Master
Latham & Watkins
Suite 1000
885 Third Avenue
New York, New York 10022
Fax: 212-751-4864

Copies of the request for hearing must be served upon all other parties, as well as upon the Election Administrator for the International Brotherhood of Teamsters, 727 15th Street NW, Tenth Floor, Washington, DC 20005, all within the time period prescribed above. A copy of the protest must accompany the request for hearing.

William A. Wertheimer, Jr.
William A. Wertheimer, Jr.
Election Administrator

cc: Kenneth Conboy
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