

**OFFICE OF THE ELECTION ADMINISTRATOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS**

IN RE: WILLIAM L. KING,)	Protest Decision 2001 EAD 418
)	Issued: August 1, 2001
Protestor.)	OEA Case No. PR072311NE
)	
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William King, a vice president and now former business agent at Local 317 who attended the IBT Convention as an elected delegate, 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*"). King alleges that Local 317 secretary-treasurer and principal executive officer Gary Staring, also an elected delegate from Local 317 who attended the IBT Convention, violated the *Rules* by denying King the opportunity to represent Local 317 at the Convention and, later, by terminating King as a Local 317 business agent.

Election Administrator representative Jason Weidenfeld investigated the protest.

Findings of Fact

The parties agree that as principal officer of Local 317, Staring has the authority to remove and in March 2001 did remove King as a business agent representing UPS employees.¹ Although it appears that Staring did not decide initially whether to replace King permanently as a UPS business agent, Staring clearly forbade King in a June 20, 2001 letter from having "professional contact with managers, employees or members of United Parcel Service." Staring added, "As you know, I removed you from these responsibilities effective March 5, 2001." In the letter, Staring directs King to follow his directives, which Staring believes King has been disregarding. Staring writes, "Let me be perfectly clear, you do not have authorization to discuss Teamsters matters with anyone associated with UPS. This includes . . . anyone . . . that may talk to you about anything regarding UPS. In addition, you are not to represent our Local in any capacity or attend any meetings that pertain to UPS at the IBT Convention." When Staring wrote the letter, he and King knew that the IBT planned to hold a meeting of delegates representing UPS-employed members in Las Vegas on the Sunday before the IBT Convention. Staring closes his letter by warning King that failing to follow these orders "will be seen as a direct threat to the health and welfare of Teamsters Local 317. As a consequence, I will have no choice but to take appropriate action."

¹ After being so removed, King continued to serve as a business agent for the local union, although one barred from UPS work. This status continued until one week after the filing of this protest, when King received notice from Staring that he had been removed altogether from his position as a business agent. King has questioned the propriety of Staring's letter, claiming "Local 317 has an election this October and Mr. Staring's actions are purely politically motivated." As discussed *infra*, we hold that Staring's actions and the other matters raised in King's protest are, even if true, almost wholly related to local union officer elections and do not fall within our jurisdiction.

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A written response by King dated June 21, 2001 states that Staring's letter contains the first directive of any type regarding UPS. King acknowledges that he was removed on March 5, 2001 as the UPS business agent "on a temporary basis" but states that as a local union officer, he has a moral obligation to help the members. King ultimately agrees to abide by the "directions in [Staring's] letter exactly as written."

On July 5, 2001, after both he and Staring attended the IBT Convention, King wrote a follow-up letter, in which he copied all UPS stewards. King states that he followed Staring's directions at the IBT Convention. Nevertheless, writes King, "As an elected delegate, I feel I had every right to attend meetings, voice my opinion on all the issues and vote without any repercussions." King finds even "more disheartening" that neither he (through Staring's directive) nor anyone else represented Local 317 at the meeting of delegates representing UPS members. King further alleges that if not for Staring's orders, he would have spoken at the IBT Convention, specifically regarding the "strike fund issue relative to the upcoming UPS contract." King concludes, "You and you alone took away our UPS members' voice at this Convention."

On July 11, Staring responded with two letters. In these, Staring admonishes King for allegedly continuing to "conduct UPS business with members." Staring questions why King did not attend the UPS meeting since King, according to Staring, constantly disregards orders anyhow. Staring also questions why King did not address him at the IBT Convention regarding his concerns. At the close of one of his letters, Staring accuses King of repeatedly failing to follow the directive not to maintain contact with UPS. On the second letter, Staring cautions King, "Your grand standing will not be tolerated!"

Staring's July 11, 2001 letters prompted King to respond on the same day with a letter in which he says he stands by his record. King also states that he would not be serving his members if he failed to act on matters brought to him personally. He believes that by not having someone from Local 317 at the meeting of delegates representing UPS-employed members, Staring did not act in his members' interests. King concludes this paragraph, "Based on this and you continuously placing me in a catch twenty-two situation you have given me no alternative but to file charges for interfering with my right as a delegate."

King has told our investigator that if not for Staring's letter, he would have spoken at the Convention regarding strike fund and contract issues that affect members employed by UPS. King also said that he resented getting Staring's letter explicitly banning him from attending the UPS representatives meeting so shortly before the meeting, well after King had made arrangements to attend. King said that he did not speak publicly at the Convention because he did not want to place the local union, the joint council, or the International in a bad light. Likewise, he stated that he did not file the protest earlier because he did not want to give the local union a "black eye."

Staring told our investigator that he received numerous complaints about King when he was a UPS business agent and, therefore, removed him from his duties relating to UPS. When asked about the language in his June 20 letter directing King "not to represent our Local in any capacity or attend any meetings that pertain to UPS at the IBT Convention," Staring said that this warning pertained to the pre-Convention meeting of delegates representing members employed

by UPS and that King knew that he no longer represented UPS. Further, says Staring, King sat in the row in front of him at the IBT Convention and never raised any of these concerns. In sum, says Staring, the protest is not about the delegate and International officer election.

After the close of our initial investigation, on July 30, 2001 Staring presented King with a letter terminating him as a Local 317 business agent. (King continues in office as a local union vice president.) In a letter to the Election Administrator, King questions the propriety of Staring's action, claiming "Local 317 has an election this October and Mr. Staring's actions are purely politically motivated." King also states that Staring is retaliating for King's filing of a protest with our office. Staring denies these allegations and alleges a variety of reasons for terminating King as a business agent, including numerous instances of insubordination, failure by King to carry out his duties as a business agent, and complaints by members about King.

One of King's witnesses stated that local union politics have ignited Staring's attacks against King. James Augst, a Local 317 business agent, said that King's potential termination was not raised during an executive board meeting only four days before it occurred. Augst believes that the magnitude of the repercussions against King is unwarranted and that Staring wants to harm King's chances in the upcoming local union officer election. Concerning Staring's orders to King regarding UPS, Augst stated that King had been ordered not to attend any UPS meetings at the IBT Convention. As to the International officer election, however, Augst stated that all delegates from Local 317 support General President Hoffa's reelection bid.

Analysis

First, the *Rules* provide that pre-election protests not "filed within two (2) working days of the day when the protestor becomes aware or reasonably should have become aware of the action protested . . . shall be waived." Article XIII, Section 2(b). The trigger for this protest was a June 20, 2001 letter received by King no later than June 21, 2001 (the date of his response). The protestor, therefore, had the letter before the IBT Convention and did not file a protest regarding its contents for more than a month. If King felt that his rights as a delegate were being restricted unfairly, he had an opportunity to address Staring directly at the IBT Convention or to file a protest with our office. He did neither.

Second, the preamble to the *Rules* provides that "[t]he Election Administrator's authority to supervise the electoral process . . . is limited to the nomination and election of International Convention delegates and alternate delegates and the nomination and election of International officers. These Rules are not applicable to elections of IBT subordinate body officers." *Russell, 2001 EAD 287* (March 31, 2001); *see also Ostrach, 2001 EAD 121* (February 1, 2001) (emphasizing that "it is not the role of the Election Administrator to regulate IBT local union elections").

In the light most favorable to the protestor, we read Staring's June 20, 2001 letter as ambiguous regarding the directives given to King. Staring and King knew that an IBT meeting of delegates representing UPS members was going to be held in Las Vegas on the Sunday before the start of the IBT Convention. Staring's letter clearly forbade King from attending the meeting, which was not part of the official Convention. Whether Staring intended for King not

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to participate on the Convention floor in any discussions that might affect UPS is unclear. However, we believe that King had a duty either to obtain a clarification from Staring or to file a protest in a prompt manner.

Moreover, King's most recent letter, after he received news of his termination, focuses on the alleged connection between his termination and the upcoming local union officer election. Nowhere does King relate the termination to the IBT International officer election. Furthermore, the testimony of King's witness, Augst, buttresses the view that local union politics and contentiousness between Staring and King are the bases for King's protest. In sum, we find that this protest lies outside of our jurisdiction and is untimely.²

Based on the foregoing, we DENY the protest.

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 (facsimile: 202-454-1501), all within the time 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
2001 EAD 418

² There are no prudential reasons to avoid applying the two-day deadline here. Compare, *Halstead*, 2001 EAD 378 (May 31, 2001), *aff'd*, 01 EAM 78 (June 15, 2001) (finding that the importance of the issue presented required us to decide the case on its merits even though the protest was filed after the two-day deadline).

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