

IN RE:

AMADEO BIANCHI

01 - Elec. App. 107 (KC)

This matter is an appeal from the Election Administrator's decision 2002 EAD 554 issued February 20, 2002. The appeal hearing was requested by Philip C. Landrigan, Esq. and James L. Hicks, Jr., Esq.

A hearing was held before me on March 5, 2002. The following persons were heard by way of teleconference: Jeffrey J. Ellison, Esq., for the Election Administrator's Office; James L. Hicks, Jr., Esq. on behalf of Dale Healea and Kenneth Bryant, both business agents of Local Union 745; Mr. Bryant; Philip C. Landrigan, Esq. on behalf of Local Union 390; Jerry Pape, principal officer of Local Union 390; Barbara Harvey, Esq. on behalf of Amadeo Bianchi; the protester; and former chief steward of Roadway Express Inc.; Mr. Bianchi; Betty Grdina, Esq. of Heller, Huron, Chertkof, Lerner, Simon & Salzman on behalf of the Leedham Campaign; Stephan Ostrach a member of the Leedham Campaign; Todd A. Dawson, Esq. and George Stamboulidis, Esq. of Baker & Hostetler on behalf of Roadway Express, Inc. and Jack Peak of Roadway Express Inc.

Following the hearing, the parties have submitted substantial supplemental factual and legal arguments. Andrew W. Shilling, Assistant United States Attorney in the Southern District of New York and Bradley T. Raymond, of Finkel, Whitefield, Selik, Raymond, Ferrara & Feldman, who did not participate in the appeals hearing, submitted letters on behalf of the United States and the International Brotherhood of Teamsters ("IBT"), respectively.

The protester, Bianchi, a former chief steward who was terminated by Roadway on October 30, 2001 asserts that two union members of the Southern Area Freight Grievance Committee, Ken Bryant and Dale Healea, denied his discharge grievance in order to punish him for supporting the candidacy of Tom Leedham, insurgent candidate for General President in the recently concluded 2001 election cycle of the IBT. The two grievance committee members were supporters of Leedham's opponent, James Hoffa. Short of physically injuring a union member for engaging in political activity, causing a member to be unjustly fired from his job in retaliation for election related conduct is the most serious specification of violation of the Election Rules.

The Election Administrator deposed the two accused grievance committee members. He was unable, and so conceded during the appeals hearing, to adduce any proof, direct or indirect, that the accused grievance committee members acted out of political motivation. To be direct about the matter (as one must be in a case implicating, as this case does, the livelihood of Mr. Bianchi and the reputations of Messrs. Bryant and Healea) the Election Administrator's decision strives mightily to throw a dark aura of suspicion around Bryant and Healea. But there is no evidence that they acted out of a political, retaliatory bias against Bianchi. Indeed, the Election Administrator's decision notes at p. 10 that the two union members voted initially to grant Bianchi's grievance, but when the panel deadlocked, they were persuaded to support the employer's position.

Roadway, the employer that fired Bianchi for what it concluded was a violation of its work rules regulating on duty (work related) injuries, concededly had no political or Rules related motivation in taking the action that it did.

Where then, is the Rules prohibited election-related, political bias necessary to sustain this protest?

With no evidence linking Roadway, that did the firing, or the Grievance Committee, that upheld the firing, to political motivation, the Election Administrator turned his attention to Don Marr, Local 390 Secretary-Treasurer and business agent servicing Roadway.

The primary evidentiary basis cited by the Election Administrator is a curious double hearsay comment denied by both (and the sole) parties to a telephone conversation. One John Chase, not otherwise identified except as “a CF employee” attributes to his terminal manager, one Tom Gurr, a statement in which he Gurr, states that Marr stated to him Gurr, in a telephone conversation between the two that he Marr had to “go over to Roadway in Miami to go through the motions of getting that motherf-cker Bianchi his job back.” According to the Election Administrator, Marr denied making the statement and Gurr denied telling Chase that Marr had used the language attributed by Chase to Gurr quoting Marr.

The Election Administrator is equivocable as to whether or not he is relying on the Chase evidence, a very modest reed indeed, in his determination that Marr sabotaged Bianchi’s grievance in order to punish him for supporting Leedham. But even if the statement was in fact said, its meaning is anything but clear. Does the “go through the motions” comment reflect a belief that the company’s case of abetting a false claim is insurmountable or that the granting of the grievance by the panel in the companion case (Daniels) made the Bianchi case a sure winner? In any case, the purported statement is conspicuous for the complete absence of any political reference.

Marr appeared for Bianchi and presented his grievance to the grievance committee, apparently without any objection from Bianchi.

Bianchi had been a long time politician and office seeker in the local, and indeed had run and lost repeatedly in elections for local office. He ran for President four times and lost. He also lost the delegate election in 2001. Marr and Bianchi have been on opposite sides of the political wars in the local for many years.

Marr and Bianchi had also been on opposite sides of protests during the 2001 election cycle, which involved such low voltage Rules issues as whether either or both had campaigned in break areas which were off limits.

The Election Administrator's decision at page 8 notes a contemporaneous protest supported by Marr against Bianchi, which was initially granted, then reinvestigated, then denied. The issue was whether or not there was a pre-existing right to campaign in an employer break room at the Miami terminal of Consolidated Freightways. The Election Administrator concluded that Marr had "misrepresented the practice permitting campaigning" because he had in fact campaigned in the break room himself.

Since this case was never appealed, and the record of the proceedings before the Election Administrator is not now before me, I accept as settled the finding that Marr "misrepresented" his knowledge with respect to campaigning in the break room. Since Marr apparently suffered no penalty, and his side won the election, and his protest loss was at the hands of the Election Administrator's investigators and not Bianchi, it is difficult to find a rational claim of political nexus between the cited protest activity and the grievance proceedings.

In any case, any doubt completely dissipates in light of the Election Administrator's formal finding that Marr's conduct at Bianchi's grievance proceeding was in fact motivated by Marr's desire to conceal or mitigate his own improper advise to Daniels to file a claim with the Central States Health and Welfare Fund. The Election Administrator's decision states at p 13:

We find Marr knew Daniels claimed to him on October 18 the injury was work-related, a claim Daniels first asserted October 14 to his employer and never wavered from. By stressing to the joint panel that Daniels was unsure of the source of his injury, Marr justified his own advice to Daniels that he should file a Central States claim. He also shifted the responsibility for the claim of work-related injury from Daniels to Bianchi with the argument that Daniels merely did as he was told by his steward. Notably, both Bryant and Healea claimed this argument was the reason they voted to discharge Bianchi.

In the first instance, Marr should not have advised Daniels to file a Central States claim. But especially when Marr saw his steward, Bianchi, ensnared by Marr's improper advice, Marr should have reverted to the truth that Daniels had asserted his injury was work-related from the moment of physician diagnosis, that the medical evidence supported that assertion convincingly, that Bianchi had given correct advice to file the injury report, and that Marr himself had been wrong to advise the Central States course. When Marr adhered to his position, he effectively caused Bianchi to be portrayed as an overreaching steward attempting to gain a member a benefit Bianchi knew the member did not merit (emphasis added).

There is, accordingly, no evidence in this record to support the Election Administrator's "finding" that Roadway, the Grievance Panel or Marr in combination or individually caused Bianchi to be fired and then lose his grievance because he supported Leedham in the 2001 International election.

My determination that no rules violation occurred with respect to union members who are indisputably subject to the Rules makes adjudication of the jurisdictional question as to Roadway unnecessary.

The Election Administrator's decision is in all respects reversed, and his remedial order is vacated in its entirety.

_____/Kenneth Conboy_____
Kenneth Conboy
Election Appeals Master

Dated: March 26, 2002