



OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
25 Louisiana Avenue, NW
Washington, DC 20001
(202) 624 8778
1 800 828 6496
Fax (202) 624 8792

Michael H Holland
Election Officer

October 16, 1990

Chicago Office
% Cornfield and Feldman
343 South Dearborn Street
Chicago, IL 60604
(312) 922 2800

John Carter
494 Kime Avenue
West Islip, N Y 11795

Richard Volpe
Secretary-Treasurer
IBT Local Union 550
6 Tuxedo Avenue
New Hyde Park, N Y 11040

Re Election Officer Case No P-015-LU550-NYC

Gentlemen

I hereby acknowledge receipt of the above referenced pre-election protest filed pursuant to the Rules for the IBT International Delegate and Officer Election, Revised August 1, 1990. A copy of the protest is enclosed. The protest alleges a violation of the Election Rules resulting from a letter, dated October 3, 1990, from the Local's Secretary-Treasurer to shop stewards. This letter transmitted an Election Officer approved listing of nomination results which was required to be posted as the result of a previous protest. For the reasons set forth below we conclude that the Election Rules have not been violated.

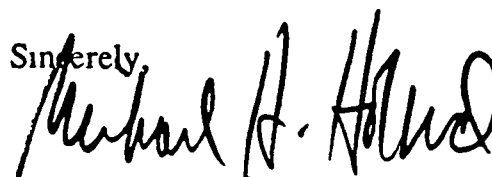
The letter in question instructs Local Union 550 shop stewards to remove a notice that was found by the Election Officer to be violative of the Election Rules and to replace it with a corrected notice. The letter also instructs the shop stewards to contact the Local when they have completed these tasks. While the letter instructs the shop stewards to take steps to comply with the Election Officer's order it also states that the Local is attempting to "reverse" this order in an appeal under the Election Rules. Finally, the shop stewards are instructed not to post the letter with the amended notice.

The Local Union's letter of October 3, 1990 is clearly not intended to interfere with or undermine the Local's compliance with the order of the Election Officer. On the contrary, the letter evidences a good faith attempt by the Local to comply with the such order, even while the local is seeking review of that order pursuant to the procedures established under the Election Rules. The fact that a party is seeking review of an order of the Election Officer is a public record. Moreover, the Local has taken the additional precaution of instructing shop stewards not to post the letter along with the corrected notice.

October 16, 1990
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If any interested party is not satisfied with this determination they may request a hearing before the Administrator within twenty-four (24) hours of their receipt of this letter. Such request shall be made in writing and shall be served on Administrator Frederick B Lacey at LeBoeuf, Lamb, Leiby & MacRae, One Gateway Center, Newark, N J 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.

Sincerely,



Michael H Holland
Election Officer

cc William B Kane
Regional Coordinator
Independent Administrator Lacey

LETTER OF THE ELECTION OFFICIALS HELD LETTER

c/o I BT
25 LOUISIANA AV NW
WASHINGTON, DC 20001
Election protest

FROM: John Carter 30/P64
494 KIMM AV
WEST ISLIP, NY 11795
(516) 586-0435

MESSAGE

DATE 10/7/90

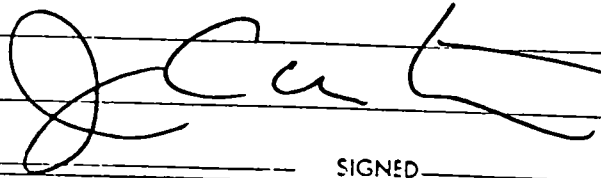
LOCAL 550 letter head, dated 10/3/90 this copy further
continues to promote Incumbents.

This targeted letter to Shop Stewards (Shop Committee)
AUS ON THE SYMPATHY OF THE INDIVIDUAL SHOPS & CRAFTS
SEEKING THEIR ASSISTANCE TO CORRECT THE VIOLATIONS AS
STATED BY MICHAEL HOLLAND IN HIS LETTER OF 10/2/90

REPLY

DATE

It must remain the responsibility of the Executive
Officers to Notify the Membership and further indicate
compliance with the decision of the Election
Officers

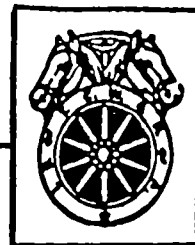


SIGNED

RETAIN WHITE COPY RETURN PINK COPY

BAKERY DRIVERS & BAKERY GOODS VENDING MACHINES
LOCAL UNION No. 550

AFFILIATED WITH THE
INTERNATIONAL BROTHERHOOD OF TEAMSTERS
CHAUFFEURS • WAREHOUSEMEN & HELPERS
OF AMERICA



RICHARD J VOLPE
SECRETARY TREASURER
EXECUTIVE-OFFICER

6 TUXEDO AVENUE • NEW HYDE PARK, N.Y. 11040 • (516) 747-0696

THOMAS FLANNERY
PRESIDENT BUS REP

JOSEPH ZADUBERA
VICE PRES.-BUS REP

October 3, 1990

Brother Stewards:

Re. Protest to Nomination results
letter dated Sept. 20, 1990 sent
to you to be posted.

Mike Holland, Election Officer, has ordered that we replace
the September 20th notice, due to rules infractions, with the one
enclosed.

We will comply and move forward to reverse this order based
on the rules and regulations for the IBT Delegate and Alternate
Delegate Elections (revised Aug. 1, 1990).

As soon as you have removed the Sept. 20th notice and replaced
it with the notice enclosed notify Local 550 - give your name and
unit when you have complied.

Fraternally yours,

A handwritten signature in black ink, appearing to read 'Richard Volpe', written over a horizontal line.

Richard Volpe
Secretary-Treasurer

DO NOT POST THIS LETTER WITH THE NOTICE.

*Rec'd 10/6/90
J. C. K.*

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INTERNATIONAL BROTHERHOOD OF TEAMSTERS
25 Louisiana Avenue NW
Washington DC 20001
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1 800 828 6496
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Michael H Holland
Election Officer

Chicago Office
% Cornfield and Feldman
343 South Dearborn Street
Chicago IL 60604
(312) 922 2800

December 7, 1990

VIA UPS OVERNIGHT

Charles Coleman
P O Box 53433
Chicago, IL 60653

William V Close
Advance Transportation Co
6767 W 73rd St
Bedford Park, IL 60638

Re. Election Office Case No. P-016-LU710-CHI

Gentlemen

A pre-election protest filed pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 (*Election Rules*) In his protest Charles Coleman alleges that he was threatened and ultimately terminated by Advance Transportation Company because of his campaign activity on behalf of Ron Carey, an accredited candidate for International Union General President, and because he was engaged in a campaign to oppose the Employers Profit Sharing Program The investigation shows the following

Mr Coleman, an employee of Advance Transportation Company, was terminated by William V Close, labor manager, on September 6, 1990 for theft of time and falsification of records Just prior to the termination meeting, Mr Close questioned Mr Coleman about his "campaigning" and his "button " Specifically Close asked Coleman "if he had decided to stop his campaigning and the wearing of the button "

Mr Coleman had been wearing a button with "12%" and a slash through it This button was the campaign button against the Employer's Profit Sharing Program Although Mr Coleman also campaigned for Ron Carey, he did not wear a Carey campaign button at any time relevant to these events He did carry a briefcase with Carey bumper stickers affixed to both sides

L .
Charles Coleman
December 7, 1990
Page 2

During the investigation, the Regional Coordinator assigned by the Election Officer asked Mr Coleman if he believed the basis for his termination was Carey campaign activity and he responded "no " Mr Coleman informed the Regional Coordinator that the "12%" button was a major concern for the employer Another employee witness, Harry Bidwell, provided information that he had been subject to discipline by the Employer, not for Carey campaign activity, but for the "12%" campaign

There is no other evidence of Carey campaign activity by Mr Coleman, or of Employer animus toward this activity

Because of the foregoing, the evidence is insufficient to support a decision that Coleman's termination was motivated by his campaign activity on behalf of Ron Carey for International President or for delegate to the International Convention The evidence is insufficient to support a finding that the termination would not have occurred "but for" this campaign activity 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/mjv

L
Charles Coleman
December 7, 1990
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cc Julie E Hamos, Regional Coordinator
Julie E Hamos & Assoc
122 S Michigan Ave , Suite 1850
Chicago, IL 60603
Tel 312-427-4500
Fax 312-427-1850

IN RE : 90 - Elec App. - 18(SA)
CHARLES COLEMAN, :
COMPLAINANT, :
and :
ADVANCE TRANSPORTATION CO., :
RESPONDENT. :
DECISION OF THE
INDEPENDENT
ADMINISTRATOR

This matter arises out of an appeal from a December 7, 1990, decision of the Election Officer in Case No. ~~90-16-10710-CH~~. A hearing was held by way of teleconference before me on December 13, 1990, at which the following persons were heard. John Sullivan, on behalf of the Election Officer; Julie Hamos, the Regional Coordinator; and Charles Coleman, the Complainant.

The facts underlying this matter are uncomplicated. Coleman was discharged from his job at Advance Transportation Company ("Advance") on September 6, 1990. The "Letter of Termination" sent to Mr. Coleman set forth the purported basis of his termination - that he "was dishonest in the theft of time and falsification of company records." Apparently, on August 20, 1990, Coleman submitted false records which reflected time for which he did not work.

Coleman alleges that there were four true motivations for his termination. First, he alleges a racial motivation. Second, he alleges that his participation in a campaign to challenge the employee's profit sharing plan (the "12% campaign") also led to

his termination. Third, Coleman wore a button announcing his support for the "New England Slate." Apparently, the "New England Slate" is the slate Coleman is affiliated with. Fourth, Coleman alleges that his campaign activities on behalf of Roy Carey, an accredited candidate to the position of International General President, contributed to his termination.

The Local Union has filed a grievance challenging Coleman's termination and Coleman has filed a charge with the National Labor Relations Board alleging that Advance disciplined him for engaging in protected activity. Coleman also indicated that he is pursuing a race discrimination charge against Advance.

Coleman has announced his candidacy as a delegate to the 1991 IBT International Convention. The Election Officer acknowledges a Coleman recognizes that his discharge, in and of itself, has not affected his eligibility to be nominated for delegate, or otherwise participate in the selection of delegates to the 1991 IBT International Convention. Notwithstanding this, the allegation that Coleman may have been discharged for his campaign activity on behalf of Ron Carey and the New England Slate is one that must be addressed under the Election Rules. See Article VIII, Section 10. ("Freedom To Exercise Political Rights").¹

¹ Coleman's involvement in the 123 campaign is not a protected political right as contemplated under the Election Rules as it does not touch upon the nomination or election of delegates to the 1991 Convention or the subsequent election of International Officers.

The Election Officer correctly states the standard under which Coleman's determination must be considered.

The National Labor Relations Board has adopted a rule for resolving cases involving a "mixed motive." This rule, adopted by the Board in Wright Line, 251 NLRB 1083, 105 LRRM 1169 (1980), enfd, 662 F.2d 899 (1st Cir. 1981), cert denied 455 U.S. 989 (1982), requires:

that the General Counsel make a prima facie showing sufficient to support an inference that protected conduct was a "motivating factor" in the employer's decision. Once this is established, the burden will shift to the employer to demonstrate that the same action would have taken place even in the absence of the protected conduct.

105 LRRM 1175. The Board's Wright Line test for resolving mixed motive cases was drawn from the Supreme Court's decision in Mt. Healthy City School District Board of Education v. Doyle, 429 U.S. 274 (1979). The Supreme Court upheld the Board's Wright Line analysis in NLRB v. Transportation Management Corp., 462 U.S. 393 (1983).

Applying this standard, the Election Officer determined that Coleman's campaign activities on behalf of Ron Carey and the New England Slate were not a motivating factor in his termination by Advance. Thus, according to the Election Officer, a prima facie case under the Wright Line test cannot be made. Although the Election Officer's ultimate disposition of this matter is correct, I disagree with his reasoning at arriving at his decision.

Under the Wright Line test, it is clear to me that a prima facie case has been made that the Ron Carey and New England Slate campaigning was a motivating factor in the discharge. Proof was offered of Advance's overly restrictive stance on such campaigning. In fact, the Election Officer has been investigating a number of

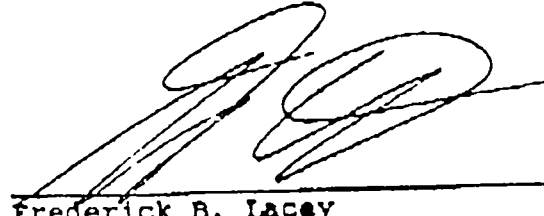
protests arising out of Advance's policies. In addition, the Election Officer is investigating another protest involving action (not termination) taken against an individual for his Ron Carey campaign activity. Moreover, an Advance representative asked Coleman, just 20 minutes prior to his termination, whether he had decided to stop his campaigning and the wearing of his "buttons." Coleman told him, "no."

Finding a prima facie case, the burden shifts to Advance to demonstrate that Coleman's termination would have taken place even in the absence of the Ron Carey and New England Slate campaigning. Based on the Regional Coordinator's thorough investigation, the Election Officer concluded that there was "insufficient [evidence] to support a conclusion that Mr. Coleman's termination would not have occurred 'but for' this campaign activity." I would say it differently: Advance has satisfied its burden of demonstrating that Coleman would have been discharged even in the absence of the Carey and New England Slate campaigning. All parties concurred that Advance was very concerned with the profit sharing issue and took a harsh stance against those involved in the 12% campaign. In addition, although the Regional Coordinator uncovered no similar incident, I accept the allegation of Coleman's "theft of time" as a serious factor in Coleman's termination.

Thus, the Election Officer's conclusion that the Election Rules have not been violated is affirmed. In affirming the Election Officer, I emphasize that in resolving this appeal,

neither the Election Officer nor I have addressed the merits of Coleman's NLRB action, his Local Union's grievance or his race discrimination charge.

In addition, it must be emphasized that Advance's conduct is suspect and this matter will be considered when addressing future protests involving Advance.



Frederick B. Lacey
Independent Administrator
By Stuart Alderoty, Designee

Dated: December 14, 1990