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174/PNW

Michael H Holland
Election Officer

November 21, 1990

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VIA UPS OVERNIGHT

Richard Kraft
4432 176th Street
Apt No 4
Lynnwood, Washington 98037

Allen McNaughton
Secretary-Treasurer
IBT Local Union 174
553 John Street
Seattle, Washington 98109

Re: Election Office Case No. P-035-LU174-PNW

Gentlemen

A pre-election protest was filed under Article XI, § 1 of the Rules for the IBT International Union Delegate and Officer Election, revised August 1, 1990 (Rules). In his protest, Mr Kraft asserts that since announcing his candidacy as a delegate in August 1990 and since, in late 1989, engaging in campaign activities on behalf of Ron Carey and the International Union election platform of the Teamsters for a Democratic Union (TDU), he was removed as a steward by Local 174 on April 25, 1990 and warned, suspended and discharged in October 1990, by his employer, Yellow Freight System. He asserts that Local 174 Secretary-Treasurer Al McNaughton, Business Agent Don Stober, and his employer are hostile to his election-related activities. He asserts that Local 174 encouraged YFS to discipline him.

The Election Officer has investigated the allegations of the "discharge as steward" protest, but has determined for the reasons stated below, that no timely violation of the Election Rules has been presented. Additionally, the complainant alleges that the Election Rules were violated when, in September and October, 1990, he was disciplined and subsequently discharged by his employer. For the reasons also stated below, the Election Officer finds that no violation of the Rules occurred with respect to this allegation.

Local 174 does not dispute that its Secretary-Treasury and its Business Agent disagree with Mr Kraft regarding union politics. However, the Local asserts that Mr Kraft was removed as steward for cause on April 25, 1990 after he abused his office by

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submitting an information request on April 19, 1990 to his employer in preparation for Step 2 of a grievance after being advised by Business Agent Stober that the grievance was being dropped at Step 1.

The Local denies any involvement in the Employer's October discipline of Kraft and pursued his grievances to a Step 2 Board of Adjustment on October 14, 1990, where his two-day suspension was reduced to a one-day suspension, and his discharge was reduced to a three-week suspension

The Election Officer's investigation demonstrated that Mr Kraft was an employee of Yellow Freight, a member of Local 174 and prior to April, 1990, a Local Union steward at Yellow Freight. Al McNaughton was Secretary-Treasurer of Local 174 and Don Stober was a Business Agent for Local 174, assigned to Yellow Freight

Mr Kraft has been an open and visible member of TDU, and a campaign supporter of Ron Carey. Since late August 1990, he has also been an announced candidate for delegate. Local 174 and Yellow Freight representatives have observed him engaged in election-related activities prior to his removal as steward and prior to his discipline. Both Local 174 and employer representatives have expressed disapproval of TDU in general and Mr Kraft's activities related thereto in particular.

However, no evidence was presented which demonstrated that Local 174 participated or conspired in any way with Mr Kraft's employer in suggesting the imposition of or imposing discipline upon him.¹ The Local successfully pursued Mr. Kraft's discipline pursuant to the grievance procedures set forth in the collective bargaining agreement between it and Mr Kraft's employer, the disciplinary suspension was reduced to a one day suspension and the discharge reduced to a three week suspension.

¹ The Election Officer has been unable to determine what effect, if any, Mr Kraft's campaign activities had on his employer's decision to discipline and discharge. Discipline imposed due to campaigning is violative of the National Labor Relations Act. The Election Officer has been informed that Mr Kraft has filed an unfair labor practice charge against his employer with the National Labor Relations Board. The Election Officer has determined that, under the circumstances of this case, it will best effectuate the purpose of the Election Rules for the issue of employer misconduct to be reviewed by the NLRB. The Election Officer makes no finding regarding the merits of that claim.

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Mr Kraft does not allege, nor does the evidence support an allegation, that the business agent assigned by Local 174 to represent Mr Kraft in the grievance procedure did not do so fairly Mr Kraft specifically stated that he had confidence in the Business Agent

With respect to Mr Kraft's removal as steward, Mr Kraft concedes he submitted an information request to his employer in regard to a grievance which he had been told by his Business Agent was not to be processed further At the time of his appointment as shop steward, he signed an acknowledgement that he functioned under the direction of the Business Agent and had no independent right to process grievances The collective bargaining agreement echoes this limitation on the steward's authority No evidence was presented demonstrating that Local 174's removal of Mr Kraft as steward was for reasons other than his exceeding his authority

Based on the foregoing facts, the Election Officer has determined that the Rules have not been violated The allegation that Local 174 improperly removed Mr Kraft as steward is barred from independent remedy because it was filed outside the time limit set forth in the Rules The Union can legitimately sanction an agent, a steward who fails to adhere to the prescribed lines of authority within the Union For this reason and since the April, 1990 removal occurred six months prior to the October, 1990 discipline by the employer, Local 174's removal of Mr. Kraft as steward is also not probative of an improper involvement by Local 174 in such discipline.

Local 174 did not participate in the employer's decision to discipline Mr Kraft The Local actively and successfully processed a grievance on Mr Kraft's behalf There is no showing of retaliation against Mr Kraft by Local 174 with respect to the employer's discipline of him

In accordance with the foregoing, the Election Officer determines that no violation of the Election Rules has occurred

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 if 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,

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N W , Washington, D C 20001, Facsimile (202) 624-8792 A copy of the protest must accompany the request for a hearing

The protest is dismissed as untimely in regard to the April 25, 1990 removal of Kraft as steward

The protest is dismissed insofar as it alleges that Local 174 participated in YFS's discipline of Kraft Kraft may file a new protest against Local 174 if he believes the Union failed to fairly represent him in his grievances regarding his October discipline

Insofar as the protest alleges that YFS's conduct violated the Rules, the protest is held in abeyance pending review of the results of the grievance procedure

Very truly yours,

Michael H. Holland / JJS

Michael H Holland

MHH/mjv

cc Frederick B Lacey, Independent Administrator, IBT
Christine M Mrak, Regional Coordinator

IN RE:	:	90 - Elec. App. - 15(SA)
	:	
RICHARD KRAFT	:	DECISION OF
and	:	THE INDEPENDENT
IBT LOCAL UNION 174	:	ADMINISTRATOR

This is an appeal from a determination by the Election Officer in [REDACTED] that Richard Kraft is ineligible to run for delegate (of Local 174) to the IBT International Convention. At issue is Article VIII, Section 10 ("Freedom to Exercise Political Rights") of the Election Rules.

As stated by the Election Officer in his Summary submitted to me:

1. At all times material to this protest, the complainant was an employee of Yellow Freight System ("YFS") and a member of Local Union 174.
2. At all times material to this protest, Al McNaughton was Secretary-Treasurer of Local Union 174.
3. At all times material to this protest, Don Stober was a Business Agent for Local Union 174.
4. At all times material to this protest, the complainant has been an open and visible member of TDU [Teamsters for a Democratic Union] and a campaign supporter of Ron Carey. Since late August 1990 the complainant has been an announced candidate for delegate to the 1991 IBT International Convention.
5. Both Local Union 174 and YFS [Yellow Freight System] were aware of Kraft's election-related activities prior to his removal as steward and his discipline by the employer.
6. On March 7, 1990, the complainant testified at a hearing conducted by the Election Officer concerning the adoption of the Election Rules. In his testimony the complainant discussed the financial disadvantages

experienced by TDU candidates when challenging incumbents. The complainant also criticized the Local Union for spending more money on its parking lot than on organizing.

7. On May 21, 1989, the complainant was appointed shop steward by McNaughton.

8. When the complainant was appointed as a shop steward, he signed an "Appointment and Acceptance" which provided in part that:

I recognize that my appointment and continuing assignment as Shop Steward is made in the sole discretion of the Secretary-Treasurer of Local 174 and with the understanding that I may be removed from that position at any time should the Secretary-Treasurer decide to do so. . . .

In participating in greivances and other Union matters, I recognize I have no right or authority to make final decision concerning formal processing or settlement.

9. Article 29 of the collective bargaining agreement between the IBT and YFS provides that "Employees, whether union members or not, shall have no independent unilateral privilege or right to invoke grievance procedures. . . ."

10. On March 9, 1990, the complainant was involved in an accident while driving a YFS truck. The accident resulted in no appreciable damage. However, a street light was damaged.

11. On March 15, 1990, the employer issued a written warning to the complainant and he filed a grievance on March 30, 1990.

12. On April 19, 1990, Stober called the complainant and told him that he was "washing out the grievance at Step 1" because he admitted that he had the accident and therefore Stober believed that the grievance had no merit. However, after receiving Stober's call, the complainant, in his capacity as shop steward, submitted a request for information to the employer to support his claim that he was subject to discriminatory discipline.

13. By letter dated April 25, 1990, McNaughton removed Kraft as shop steward for proceeding with his

grievance after being told by Stober that it was being dropped.

14. On September 27, 1990, Kraft was issued a warning letter [by YFS] for taking the wrong trailer to a customer. On October 3, 1990, Kraft was issued a warning letter [by YFS] for failing to properly complete paper work. In that warning letter the employer made reference to similar failures that occurred on February 9, July 26, August 1, August 7 and August 30, 1990. Kraft was warned that "any further incidents of this nature will result in disciplinary action up to and including discharge."

15. By letter dated October 24, 1990, Kraft was suspended for two days because of a failure to complete paper work and unloading and loading duties.

16. By letter dated October 25, 1990, Kraft was terminated because he improperly picked up two shipments of freight.

17. Kraft apparently does not dispute that basis of the discipline but rather argues that the penalties are excessive and/or discriminatory.

18. Kraft grieved his discipline under the grievance procedure established by the collective bargaining agreement between YFS and the IBT. Kraft was represented in that procedure by a Business Agent, other than Stober, with (sic) whom he has confidence.

19. Kraft's discipline was reduced from a two-day suspension to a one-day suspension and from termination to a three-week suspension.

20. Kraft's discipline has not affected his eligibility to be a candidate or to otherwise participate in the nomination or election of delegates and alternate delegates to the 1991 IBT International Convention.

The hearing on this appeal was conducted by me on November 29, 1990, by teleconference. Participating were Mr. Kraft; a witness on behalf of Mr. Kraft, Gordon Teller; Mr. Bruce Heller, on behalf of Local 174; the Regional Coordinator, Christine Mrak, Esq.; and John Sullivan, on behalf of the Election Officer. I

find that the Election Officer's findings of fact have been established to my satisfaction.

Mr. Kraft ("Kraft") asserts that his removal as shop steward and the disciplinary action taken by his employer, YFS, was in retribution for Kraft's political alliance with Mr. Ron Carey (a candidate for IBT General President) and his affiliation with the TDU. In support of these assertions, Kraft specifically highlights the fact that he announced his candidacy for delegate to the 1991 IBT International Convention in August 1990, and that he has, since that time, engaged in campaign activities on behalf of Mr. Carey and the TDU.

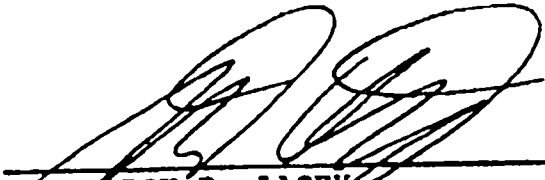
The Election Officer dismissed as untimely the protest arising out of Kraft's April 25, 1990, removal as shop steward. Article XI, Section 1(a) of the Election Rules provides that pre-election protests must be filed within forty-eight (48) hours or such protests shall be waived. The Election Officer, however, overlooks the fact that the Election Rules did not become effective until April 27, 1990. While under these circumstances, in the interest of fairness, a short delay in the filing of a protest arising out of an April 25, 1990, incident could be excused, the long delay in this case, of many months, is inexcusable. Thus, I agree that Kraft's protest arising out of his April 25 removal as shop steward is not timely. Kraft was familiar with the Election Rules and in fact testified at a

hearing conducted by the Election Officer in March 1990 for the purpose of eliciting comments to the draft rules.

Notwithstanding the untimeliness of the protest arising out of the April 25, 1990, incident, the Election Officer investigated that incident to determine whether there existed a pattern of political retaliation against Kraft. None was found. In fact, justification for the removal of Kraft as shop-steward was adequately established.

As for the protest arising out of YFS's disciplinary action, I also agree with the Election Officer that the Election Rules were not violated in connection with that action. No evidence was introduced, beyond Kraft's suspicion and belief and the belief of his witness Gordon Teller, that Local 174 instigated YFS's actions or aided YFS in its determination or otherwise acted in reaction to Kraft's political activities. Kraft himself acknowledges that Local 174's representation of Kraft in his grievance was adequate.

The Election Officer's decision is affirmed in all regards.



FREDERICK B. LACEY
Independent Administrator
By: Stuart Alderoty, Designee

Date: November 29, 1990

