



OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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Election Officer

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November 27, 1991

VIA UPS OVERNIGHT

Joseph Kouba
Cynthia A. Kouba
9127 South Francisco
Evergreen Park, IL 60642

William D. Joyce
Secretary-Treasurer
IBT Local Union 710
4217 S. Halsted Street
Chicago, IL 60609

Advance Transportation
6767 W. 75th Street
Bedford Park, IL 60638

Re: Election Office Case No. P-1049-LU710-CHI

Gentlemen and Ms. Kouba:

A protest was filed pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*"). In his protest of November 6, 1991, Mr. Joseph Kouba alleges that his rights under the *Rules* were violated when Advance Transportation Company discharged his wife, Cynthia Kouba, because of his campaign activities on behalf of Ron Carey. The Election Officer's investigation, conducted by Adjunct Regional Coordinator Deborah Schaaf, revealed the following.

Mr. Kouba, an employee of United Parcel Service at its Bedford Park, Illinois location, is a member of Local 710 and an active and known supporter of the Ron Carey slate, as well as an otherwise active Union dissident. Local 710 also has a collective bargaining agreement with Advance Transportation Company ("*Advance*"), where Cynthia Kouba, his wife, was employed until her discharge. Ms. Kouba was not in the bargaining unit represented by the IBT and neither is nor was a member of the IBT or its Local 710.

Ms. Kouba was hired as a part-time personnel assistant by Advance on September 3, 1991. As part of her duties, Ms. Kouba was privy to personnel matters affecting Advance Transportation. For instance, on one occasion she was privy to the instructions given by William Close, the Labor Relations and Personnel Manager for Advance, to Joanne Budnick regarding the hiring of individuals referred by Local Union 710.¹

¹ Mr. Kouba contends that Advance was hiring these individuals in order to permit them to obtain good-standing status in Local 710 and thus eligibility to vote in the

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While being trained or shortly thereafter, Ms. Kouba's immediate supervisor, Joanne Budnick, the assistant to the Personnel Manager, referred to Local 710 dissidents with whom Ms. Kouba was acquainted as troublemakers. Ms. Kouba at that time disclosed that she was acquainted with these individuals and that, furthermore, her husband Joseph Kouba had been likewise active in dissident Union politics and was currently promoting Ron Carey's candidacy for IBT General President.

On September 10, 1991, a week after she was hired, Ms. Kouba was discharged. Advance alleges that she was discharged because she lacked trucking experience and did not answer the telephone nor file documents appropriately and/or within a reasonable time. Ms. Kouba denies any such problems with her work performance. Joseph Kouba alleges that the reason for his wife's discharge was, in fact, her relationship to him and other Carey supporters, to discourage his protected campaign activities and/or the protected campaign activities on behalf of Ron Carey by IBT members employed by Advance and that Advance is therefore in violation of the *Rules*.²

Even if Mr. Kouba's position as to the basis for his wife's discharge is credited, however, Ms. Kouba's discharge does not violate the *Rules*. Ms. Kouba was a confidential management employee of Advance. A confidential employee is one who assists and acts in a confidential capacity to persons who formulate, determine and effectuate management policies in the field of labor relations and/or who otherwise have access to such confidential information. BF Goodrich Co., 115 NLRB 772 (1956). Ms. Kouba worked in a small personnel office. As evidenced by the hiring instructions Ms. Budnick, Ms. Kouba's direct supervisor, received from Mr. Close, Ms. Budnick's duties clearly require her to effectuate labor relations policies for management. As an assistant to Ms. Budnick, working in a small office and privy to the exchange of such information, Ms. Kouba was a confidential employee.

September 14, 1991 Local Union 710 Local Union officer election. The Election Officer's investigation found no evidence supporting this allegation. Further, the Election Officer has no jurisdiction with respect to Local Union officer elections, *Rules*, Preamble, pp. 1-2, and therefore, would not have authority with respect to alleged fraudulent hiring done to affect the outcome of a Local Union election.

² Advance may argue that the protest is untimely under the terms of Article XI of the *Rules*. Since this matter involves charges of intimidation and harassment going to the heart of the March 14, 1989 Consent Order, the Election Officer has considered this protest on its merits. *Rules*, Article XI, § 2.

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Generally, under the National Labor Relations Act ("NLRA"), confidential employees may be discharged with impunity for engaging in activities protected by that Act. NLRB v. Hendricks County Rural Electric Membership Corp., 454 U. S. 170 (1981). Since confidential employees are not considered employees within the meaning of the NLRA they may be discharged for Union-related activity even if discharge for such activity would be otherwise illegal. Since confidential employees are supposed to provide total loyalty to the employer, if the employer disapproves of the Union activity in which the confidential employee engages, the employer may discharge that confidential employee.

Similarly, the *Rules* protect only the right of IBT members to participate in the 1991 IBT International Union officer election. The *Rules* do not afford protection for persons who are not members of the IBT to engage in such activities. Ms. Kouba is not an IBT member. Further, under the confidential employee analysis, she is obligated to provide full loyalty to her employer. Ms. Kouba gave notice to Advance of her partisan position in the 1991 IBT International Union officer election. Once her position was known to Advance, Advance would not be obligated to continued her employment if it believed that the confidentiality of her position might be thereby compromised. Advance could discharge Ms. Kouba even if the discharge was as a result of her political position with respect the 1991 IBT International Union officer election without violating the *Rules*. NLRB v Hendricks Rural Electric Membership Corp., *supra*. For all these reasons, this 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

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MHH/ca

cc: Frederick B. Lacey, Independent Administrator

Julie E. Hamos, Regional Coordinator

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