

OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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Michael H. Holland
Election Officer

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March 17, 1992

VIA UPS OVERNIGHT

Robert S. Naslanic
441 Clair
Garden City, MI 48135

United Parcel Service
29855 Schoolcraft
Livonia, MI 48150

Greg Lowran
c/o IBT Local Union 243
2741 Trumbull Avenue
Detroit, MI 48216

James F. Esser, President
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Leon Cooper
c/o IBT Local Union 243
2741 Trumbull Avenue
Detroit, MI 48216

Re: Election Office Case No. P-1152-LU243-MGN

Gentlemen:

The protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Robert S. Naslanic, a member of IBT Local Union 243. Mr. Naslanic contends that he is being disciplined by his employer, United Parcel Service ("UPS"), in retaliation for his political posture during the recently concluded 1991 IBT International Union Officer election. The protest was investigated by Regional Coordinator James De Haan.

Mr. Naslanic was an active participant in the totality of the election processes leading to the certification of the IBT International Union Officers. During the entirety of the process, Mr. Naslanic supported first delegate and alternate delegate candidates committed to the election of Ron Carey as General President of the International Brotherhood of Teamsters ("IBT"), and then Mr. Carey and the other members of his slate. For purposes of deciding this protest, the Election Officer assumes that UPS is aware of Mr. Naslanic's election-related activities and the candidates whom he supported.

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Mr. Naslanic was suspended by UPS for absenteeism. Although scheduled to work on December 12, 1991, he did not do so. He claims that his absence was related to his attendance at a victory party for Ron Carey and the other members of his slate.

Mr. Naslanic's absence from work on December 12, 1991 was not his first absence during the calendar year 1991. Mr. Naslanic apparently concedes that his absence on December 12, 1991 was sufficient to trigger discipline pursuant to the collective bargaining agreement between UPS and the IBT. He contends only that the discipline was excessive. "I was suspended for ten days (eight working days), though the work rules call for a one-week suspension." Mr. Naslanic contends that this disparity was retaliatory based on his election-related conduct, and that other IBT members employed by UPS have been treated less severely for absenteeism.

The Election Officer has reviewed the records of all other IBT members employed by UPS to whom Mr. Naslanic compared himself and who, he contends, were treated less severely than he. Such investigation reveals that Mr. Naslanic was absent from work during calendar year 1991 a greater number of times than these other UPS employees. During the first half of calendar year 1991, Mr. Naslanic was absent more often than any of the UPS employees to whom he compared himself. The records further reveal that, with the exception of one employee, Mr. Naslanic was also absent a greater number of times during the last half of calendar year 1991. The one employee who was absent a greater number of times during the second half of the year, ten absences, received two verbal warnings -- one in the presence of the Local Union's steward and one of the Local Union's business agent. That employee, absent on seventeen occasions during calendar year 1991, received no suspension. Mr. Naslanic, who was absent on sixteen occasions during the first half of calendar year 1991, received a warning notice during the first half of the year. His additional six absences in the second half of the year triggered the instant suspension. Whether such six additional absences, for a total of twenty-two absences during calendar year 1991, were sufficient to permit UPS to suspend Mr. Naslanic and, if UPS could suspend him, whether an eight-working day suspension was justified, no disparity of treatment has been demonstrated sufficient to justify an inference that UPS discriminated against Mr. Naslanic because of his election-related activities.

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The Election Officer is not determining whether UPS was entitled under the terms of the collective bargaining agreement between the IBT and UPS and/or the work rules in effect pursuant to the terms of that collective bargaining agreement to suspend Mr. Naslanic. Neither is the Election Officer determining, assuming that UPS is entitled to suspend Mr. Naslanic, whether the length of the suspension is proper under the terms of the collective bargaining agreement or work rules. Those matters are presently the subject of a pending grievance; whether the suspension was for just cause or otherwise appropriate under the collective bargaining agreement or work rules will be determined by the grievance proceedings.

The Election Officer does not have jurisdiction to determine whether a collective bargaining agreement or work rules have been violated. His jurisdiction with respect to employer-imposed discipline is limited to determining whether the discipline was discriminatorily motivated by the IBT member's election-related activities. The Election Officer concludes that the evidence in this case does not justify a finding that the discipline imposed upon Mr. Naslanic by UPS is sufficiently disparate to conclude that UPS was motivated by Mr. Naslanic's election-related activities.

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 &

¹ Mr. Naslanic also voices his concern that Local Union 243 may not properly represent him in the grievance proceedings since his political posture during the 1991 IBT International Union Officer election campaign was not congruent with the position taken by the officers of Local Union 243. The grievance, however, remains pending; there has been no final determination. The matter of alleged improper representation will not be ripe for consideration by the Election Officer until the grievance been finally determined, at which point Mr. Naslanic may, if appropriate, file a protest.

11, 1991, Mr. Naslanic had attended a celebration party for the election victory of Mr. Carey and his Slate. Mr. Naslanic also contends that Local 243 failed to represent him adequately in his attempt to challenge the suspension through the collective bargaining grievance procedure.

For purposes of his analysis the Election Officer assumed that Mr. Naslanic's political activities and beliefs were known to the officers of Local 243 and to UPS. For purposes of this appeal, it is further assumed that Mr. Naslanic's political affiliation was a "motivating factor" in UPS's decision to suspend from work.

In the past, when faced with an employer's "mixed motive" for imposing discipline on an employee, the analysis employed by the National Labor Relations Board ("NLRB") in NLRB v. Wright Line, 251 NLRB 1083, 105 LRRM 1169 (1980), aff'd, 662 F.2d 889 (1st Cir. 1981) cert. denied, 455 US 989 (1982) has been followed in determining whether the employer acted improperly. The Wright Line test requires:

[T]hat the [complaining] party 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.

[Wright Line, 105 LRRM at 1175.]

Having already assumed, for purposes of argument, that Mr. Naslanic has made a prima facie showing, UPS must then demonstrate that it would have suspended Mr. Naslanic for the same length of time even in the absence of his political ties to Carey.

Reviewing the record before me, I find that UPS has met its burden thus, Election Officer's denial of Mr. Naslanic's protest is affirmed.

Although UPS disputes the actual length of the suspension, for purposes of this analysis, I adopt the Election Officer's finding that the suspension lasted for ten days, which included eight working days. A review of Mr. Naslanic's attendance records discloses that in 1991 Mr. Naslanic was absent 22 days. Sixteen of those absences occurred in the first half of the year, and the remaining 6 occurred in the latter half. Mr. Naslanic claims that he should not have been suspended at all,¹ or in the alternative, that the suspension was excessive. He contends that he was subjected to disparate treatment because of his political activity.

First, the Election Rules do not go so far as to address the question as to whether the discipline imposed by UPS on Mr. Naslanic is inconsistent with UPS's collective bargaining agreement with the Local. As stated by the Election Officer in his Summary:

Whether UPS was entitled to suspend Mr. Naslanic for eight working days upon Mr. Naslanic's twenty-second absence for the year is a matter of interpretation and application of the collective bargaining agreement between UPS and the Local.


What the Election Rules are concerned with is whether Mr. Naslanic was treated differently than other UPS employees because

¹ Mr. Naslanic suggests that the vast majority of his absences were "excused" medical absences. UPS disputes this contention. For purposes of this analysis, it is not necessary to resolve this conflict.

of his support of Carey. See Election Rules Article VIII, Section 10.a. (prohibiting discriminatory retaliatory action against an IBT member based on political beliefs or activities). The Election Officer's review of UPS' records reveals that UPS' suspension of Mr. Naslanic is consistent with its treatment of other employees similarly situated.

Turning now to the question of whether the Local provided Mr. Naslanic with adequate representation during his grievance proceeding, at the time the Election Officer issued his decision, Mr. Naslanic's grievance process had not been exhausted. In his decision the Election Officer noted that Mr. Naslanic was free to file another protest against the Local once the grievance process was completed. Thus, at this point, the issue of whether the Local's representation of Mr. Naslanic during the grievance proceeding was tainted with retaliation because of Mr. Naslanic's political activity is not properly before me.

For the foregoing reasons, the Election Officer's decision is affirmed in all respects.



Frederick B. Lacey
Independent Administrator
By: Stuart Alderoty, Designee

Dated: March 26, 1992