



OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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480/SEC

Michael H Holland
Election Officer

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343 South Dearborn Street
Chicago, IL 60604
(312) 922-2800

January 21, 1991

VIA UPS OVERNIGHT

Kenneth L. Smith
2753 Dick Farmer Road
Cedar Hill, TN 37032

Luther Watson
President
IBT Local Union 480
643 Spence Lane
Nashville, TN 37207

Thomas Barnes, Jr.
212 Imperial Drive
Nashville, TN 37210

Waldolf Coleman
3055 Richmond Hill Drive
Nashville, TN 37207

Re: Election Office Case No. P-189-LU480-SEC

Gentlemen.

A pre-election protest has been filed pursuant to Article XI of the Rules for the IBT International Union Delegate and Officer Election, revised August 1, 1990. The Complainant, Kenneth L. Smith, alleges that he was beaten by Waldolf Coleman as a result of a discussion he had over the delegate selection campaign with Thomas Barnes.

The Election Officer interviewed the Complainant and three other witnesses. Mr. Barnes and Mr. Coleman submitted sworn affidavits transmitted to the Election Office by the President of Local 480, Luther Watson.

The Complainant's story, which was corroborated in essential part by three other witnesses who have no connection to him, is as follows. The Complainant works for Yellow Freight System, in Nashville, Tennessee and is a member of Local 480. On December 18, 1990, he entered the driver's room in his home terminal at about 10 00 a m. While he was in the terminal, he was approached by Union Steward Thomas Barnes, who sought Smith's support for the slate headed by Local President Luther Watson in the upcoming delegate election. Smith told Barnes that he wouldn't support Watson's slate and that he was for the TDU platform. Subsequently, another driver Waldolf Coleman, entered the discussion and called Smith a "mother fucking scab" and a "Union Breaker." Smith states that he believed that Coleman was trying to instigate

a fight Smith refused to fight and began to leave. As Smith was leaving, Coleman struck him, knocking his hat and glasses off. Smith did not work the following day due to this injury which was diagnosed as "cervical strain, post concussive syndrome." His treating physician states that he was disabled from work for two weeks.

Local 480 submitted the affidavit of Thomas Barnes which differed from the above account in the following ways: Barnes stated that he was not involved in a discussion with Smith, that Smith called Coleman a cocksucker, and that he turned and saw Smith picking up his glasses. Barnes maintains that he was not looking in the direction of Smith and Coleman when the incident occurred and that he does not know whether a political discussion preceded the incident.

Local 480 also submitted the affidavit of Waldolf Coleman. Coleman's affidavit is similar to Barnes, except that Coleman states that Smith shoved and tried to hit him, while Barnes opined that it appeared to him that there were no "licks" exchanged.

Since Mr. Smith's testimony is supported by three additional witnesses who have no apparent connection to him, the Election Officer credits that testimony.

Subsequent to the altercation, On December 20, 1990, the Company discharged Mr. Smith and Mr. Coleman. Mr. Smith filed a grievance protesting this discharge. After this grievance was filed, the Company offered, through the Union, to reduce the discharge to a suspension conditioned upon the withdrawal of the grievance. Mr. Smith has refused to withdraw his grievance on the basis that he did nothing to provoke the altercation and that he should not receive any discipline. That grievance will shortly be heard at the second step of the contractual grievance procedure. The Company and the Union state that the same settlement offer was made to Mr. Coleman and he accepted it.

Since I have credited Mr. Smith's version of the events at issue, I believe that the grievance procedure under the contract should also vindicate Mr. Smith's argument. There is virtually no evidence, however, that the Company acted on the basis of Mr. Smith's political views. Without such evidence, I do not have jurisdiction to take any action with respect to the discharge.

Similarly, there is virtually no evidence that Local 480 had responsibility for the incident. Mr. Coleman is not an officer or business agent or steward of Local 480. There is not enough evidence to conclude that Local 480 instigated the incident or that it ratified or condoned it. The Local has processed Mr. Smith's grievance and has obtained at least one settlement offer from the Company, we assume that it will represent Mr. Smith as vigorously as it does all persons subject to discharge. Of course, should the Union fail to represent Mr. Smith because of his political views or because Mr. Smith filed this protest, that action would be a violation of the Rules.

The violence in this case cannot be condoned. I have found that Mr. Coleman assaulted Mr. Smith because Mr. Smith expressed his political views and refused to support a particular slate of delegate and alternate delegate candidates. Moreover, such violence took place in a drivers room at the facility where many other union members were present. The violent conduct herein can reasonably be expected to discourage campaign activity by other union members. Such conduct violates the Rules.

The protest is therefore GRANTED.

Mr. Coleman is ordered to cease and desist from all similar or related conduct in the future. Mr. Coleman is ordered not to threaten, assault or otherwise interfere with any IBT member's campaign activities or statements or expressions of support for any candidate or slate of candidates for delegate, alternate delegate or International Office.

The proper remedy herein includes the posting of the attached notices on all Local Union bulletin boards, one signed by the Election Officer and one signed by Mr. Coleman. These notices should make it clear that individuals cannot be abused, threatened or assaulted for expressing their political views.

In addition, Mr. Coleman is ordered to reimburse Mr. Smith for any out of pocket medical expenses he has incurred due to his injury due to the assault. Mr. Smith should submit any bills he has already received to Mr. Coleman within 72 hours of receiving this decision. Copies of these bills should also be submitted to the Office of the Election Officer and should contain the Case Number of this file. Mr. Coleman shall remit the balance due to Mr. Smith within 72 hours of receiving the bills and should send documentation of this action to the Office of the Election Officer.¹

Further, the Election Officer notifies the Local Union, all candidates for delegate or alternate delgate and all slate representatives that if they permit or suffer Mr. Coleman's participation in the delegate and alternate delegate campaign, they will be held responsible for Mr Coleman's conduct.

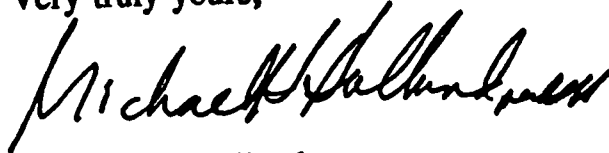
If any person is not satisfied with this determination, he may request a hearing before the Administrator within twenty-four (24) hours of his receipt of this letter. Such request shall be made in writing and shall be served on Administrator Frederick B. Lacey at LeBoeuf, Lamb, Leiby & MacRae, One Gateway 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

¹ The Election Officer notes that Mr. Coleman holds no office or position in Local 480. If Mr. Coleman had held such office or position, further and punitive, remedies would have been appropriate and would have been approved by the Election Officer.

Kenneth L. Smith
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absent extraordinary circumstances, no party may rely upon evidence that was not presented to the Office of the Election Officer in any such appeal.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael H. Holland". The signature is written in a cursive, flowing style with some loops and flourishes.

Michael H. Holland

cc: Mr. Frederick B Lacey
Donald Williams, Regional Coordinator

NOTICE TO TEAMSTER MEMBERS

FROM: MICHAEL H. HOLLAND, ELECTION OFFICER, IBT

You have the right to participate in campaign activities on behalf of candidates for delegate and alternate delegate to the 1991 IBT International Convention.

You have the right to engage in campaign activities on behalf of candidates for International Office in the IBT.

You have the right to engage in such campaign activities, including the discussion of what delegates or officers, you support or oppose, on the employer's premises in on-work areas during non-work time.

You have the right to engage in such campaign activities without being physically assaulted or without being fearful of physical assault.


Michael H Holland

This is an affidavit notice and must remain posted for thirty consecutive days from the day of posting and must not be altered, defaced or covered by any other material.

NOTICE TO TEAMSTER MEMBERS

FROM: WALDOLF COLEMAN, MEMBER, LOCAL UNION 480

I will not assault or threaten to assault any member of the union for expressing his preference about candidates for delegate and alternate delegate to the 1991 IBT International Convention.

I will not assault, or threaten to assault any member of the union for expressing his preference about candidates for the International Office in the IBT.

I will not assault, or threaten to assault any member of the union for engaging in campaign activities related to the delegate election to the 1991 IBT International Convention or the election of International Officers

I will reimburse Kenneth Smith for any out of pocket medical expenses he incurred as a result of the assault he suffered on December 18, 1990.

Waldorf Coleman

This is an official notice and must remain posted for thirty consecutive days from the day of posting and must not be altered, defaced or covered by any other material

IN RE:

KEN L. SMITH,

Complainant,

and

WALDORF COLEMAN,

Respondent.

91 - Elec. App. - 51 (SA)

DECISION OF THE
INDEPENDENT ADMINISTRATOR

This matter arises from an appeal of the Election Officer's determination in Case No. P-189-LU480-SEC. A hearing was held by way of teleconference before me on January 28, 1991, at which the following persons were heard: John Sullivan and Delores Hall, on behalf of the Election Officer; Thomas Barnes, a Chief Job Steward for IBT Local Union 480 ("Local 480"); and Ken L. Smith, the complainant.

This appeal involves a very serious matter: whether it is within the rights of a member to openly support a candidate (or slate of candidates) of his choice without fear of reprisal through physical intimidation or violence. The complainant, Mr. Smith, a member of Local 480 contends that he was brutally attacked from behind in the drivers' room at Yellow Freight Systems, Inc. ("YFS"), in Nashville, Tennessee, by Mr. Coleman, another Local 480

member, for voicing his political support for a campaign slate not supported by Mr. Coleman.

More specifically, Mr. Smith contends that just prior to the attack he was engaged in a discussion in the YFS drivers' room with Mr. Barnes. Mr. Barnes had asked Mr. Smith whom he would support in the upcoming Local 480 delegate election. During the discussion between Messrs. Barnes and Smith there were other members present, including Mr. Coleman. Mr. Smith indicated that he would be supporting the slate of candidates who were opposing the slate formed by the incumbent officers.

Soon after the discussion between Mr. Smith and Mr. Barnes concluded, Mr. Coleman began "cussing" Mr. Smith in an extremely loud and threatening manner. At the time, Mr. Coleman was standing very close to Mr. Smith and he was pointing his finger in Mr. Smith's face. Mr. Smith then walked away after calling Mr. Coleman a "****sucker." As Mr. Smith's back was turned, he was struck in the back of the head behind the right ear by Mr. Coleman.¹ Mr. Smith's hat and eyeglasses flew off and he was temporarily disoriented from the impact of the blow to the head.

The Adjunct Regional Coordinator, Delores Hall, conducted an investigation of the incident which included interviewing three Local 480 members that were present in the drivers' room at the

¹ Mr. Smith subsequently went to the company doctor and a neurologist. Mr. Smith, apparently reading from a medical report, indicated that he had undergone a CAT scan which revealed a bruise at the base of his brain, a cervical strain. Mr. Smith also suffered from post concussion syndrome.

time of the incident. Those three members corroborated the events as Mr. Smith had related them. Other members were contacted but refused to cooperate with the investigation. Two witnesses expressed to Ms. Hall their desire to remain anonymous because they did not want to get involved further. One witness, while indicating his fear of Mr. Coleman, did identify himself because he felt his freedom of speech rights outweighed his personal safety concerns. In their statements to the Election Office, the witnesses also raised serious allegations about Mr. Coleman's propensity to violence, including but not limited to, threatening another union member at gun point during a union meeting, and physically assaulting other union members. One witness described Mr. Coleman's personality as "explosive."

Only Mr. Barnes, a friend of Mr. Coleman, explained the incident differently from Mr. Smith or the three witnesses. Mr. Barnes indicated at the hearing that after the heated exchange between Mr. Coleman and Mr. Smith, he turned away and did not see Mr. Coleman strike Mr. Barnes. However, Mr. Barnes stated that upon turning around and seeing Mr. Smith's eyeglasses and hat on the floor, he asked Mr. Coleman to leave the room and not to get involved any further with Mr. Smith. The two, Coleman and Barnes, both truck drivers, then left together on a "run" to the same destination in their respective trucks. Since Mr. Smith's contentions are supported by three eyewitnesses who have no connection to him, I find his version of the facts credible. Mr.

Barnes, a friend of Mr. Coleman, is not a disinterested observer. I discredit his testimony and accord it no weight.

My office wrote to Mr. Coleman notifying him of the time and place of the hearing. He was also contacted by telephone by Ms. Hall of the Election Office. That he failed to appear and offer a different version (or even corroborate Mr. Barnes' version) lends further support to Mr. Smith's version of events.

I find that Mr. Smith was assaulted by Mr. Coleman for expressing his intention to support a particular slate of candidates.

I cannot express strongly enough that the type of violent conduct exhibited by Mr. Coleman in reaction to Mr. Smith's political views is of a most serious nature. Aside from issuing a determination and imposing a remedy in this matter, I am going to forward the information that I have received, along with a copy of this decision to the Investigations Officer, Mr. Charles M. Carberry, and if he deems it warranted, he may conduct an independent investigation of Mr. Coleman's union-related violent activity.

Violence, such as that perpetrated by Mr. Coleman on Mr. Smith, has absolutely no place in the conduct of fair, honest and open elections pursuant to the Election Rules. Moreover, such violence took place in the YFS drivers' room in front of many union members. Mr. Coleman's violent conduct can reasonably be expected to influence the election process by discouraging campaign activity

by union members. Such conduct is "chilling," violative of the Rules and can not be tolerated.

Turning now to the remedy to be imposed, I adopt and order the following measures as ordered by the Election Officer in his January 21, 1991, Decision at page 3:

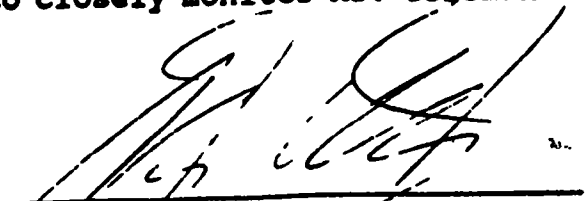
Mr. Coleman is ordered to cease and desist from all similar or related conduct in the future. Mr. Coleman is ordered not to threaten, assault or otherwise interfere with any IBT member's campaign activities or statements or expressions of support for any candidate or slate of candidates for delegate, alternate delegate or International Office.

The proper remedy herein includes the posting of the two attached notices on all Local Union bulletin boards, one signed by the Independent Administrator and Election Officer, and one signed by Mr. Coleman. These notices should make it clear that individuals cannot be abused, threatened or assaulted for expressing their political views.

In addition, Mr. Coleman is ordered to reimburse Mr. Smith for any out-of-pocket medical expenses he has incurred due to his injury due to the assault. Mr. Smith should have submitted any bills he has already received to Mr. Coleman within 72 hours of receiving the Election Office's January 21, 1991 decision. Copies of these bills should have also been submitted to the Office of the Election Officer and should contain the Case Number of this file. If Mr. Smith has not done so already, he should immediately submit his bills to Mr. Coleman and the Election Officer. Mr. Coleman shall remit out-of-pocket medical expenses to Mr. Smith within 72 hours of receiving the bills and should send documentation of this action to the Office of the Election Officer.

Further, the Independent Administrator and Election Officer shall notify the Local Union, all candidates for delegate or alternate delegate and all slate representatives by copy of the attached notice that if they permit Mr. Coleman's participation in the delegate and alternate delegate campaign, they will be held responsible for Mr. Coleman's conduct.

I direct the Election Officer to closely monitor Mr. Coleman's compliance with this decision.



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

Dated: January 29, 1991.

NOTICE TO TEAMSTER MEMBERS

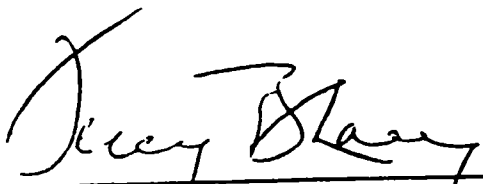
**FROM:
FREDERICK B. LACEY, INDEPENDENT ADMINISTRATOR, IBT
MICHAEL H. HOLLAND, ELECTION OFFICER, IBT**

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You have the right to engage in such campaign activities, including the discussion of what delegates or officers, you support or oppose, on the employer's premises in on-work areas during non-work time.

You have the right to engage in such campaign activities without being physically assaulted or without being fearful of physical assault.



Frederick B. Lacey
Independent Administrator

Michael H. Holland
Election Officer

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Waldorf Coleman

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