

OFFICE OF THE ELECTION OFFICER  
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Election Officer

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March 11, 1991

**VIA UPS OVERNIGHT**

Robert Cremen  
1214 Bonaire Road  
Forest Hill, MD 21050

Gene Schifflett  
Secretary-Treasurer  
IBT Local Union 311  
416 Eastern Blvd.  
Baltimore, MD 21221

Re: Election Office Case No. P-425-LU311-MID

Gentlemen:

A pre-election protest has been filed pursuant to Article XI of the Rules of the, IBT International Union Delegate and Officer Election, revised August 1, 1990. The Complainant, Robert Cremen, was a Union Steward in Local Union 311 until January 28, 1991, when he was removed from his post by Gene Schifflett, the Secretary-Treasurer of the Local. Cremen had also sought to be nominated as a delegate for election to the 1991 IBT Convention. He was held ineligible to be a candidate by the Election Officer in Case NO. E-090-LU311-MID (December 21, 1990).

The investigation revealed the following. Robert Cremen was appointed to be a Steward at his employer's facility, Songer Corp. He was appointed almost four years ago by his father, who was then prior Secretary-Treasurer of the Local. During the ensuing 46 months Cremen served as Steward without complaint from the other members at his work site. Mr Cremen submitted a petition from several members at Songer who wish to keep him as a steward, Mr. Schifflett concedes that he has no problems with Mr. Cremen's performance as a Steward.

Mr Cremen sought to become a delegate to the 1991 IBT Convention. He was nominated and seconded at the Local's nomination meeting on December 9, 1990. Immediately after the meeting, Mr. Cremen's nomination was challenged on the basis that Mr Cremen had not timely paid his dues for January, 1990. This challenge was upheld, as noted above and Mr. Cremen did not appeal the Election Officer's decision.

Under the Local Constitution and Bylaws, shop stewards are appointed and serve at the will of the Secretary-Treasurer. The Secretary-Treasurer asserts that he dismissed Cremen because Cremen creates problems in the Local which make it more difficult to

run the Local. Mr Schifflett provided several examples of what he considered to be these problems. One example involved a layoff at Songer, Cremen wanted the most senior man to be laid off because he was a "big mouth." Schifflett admonished him that the Union had to stand behind the principle of seniority. Schifflett also said that Veteran's Day in 1990 Cremen caused trouble by pointing out that the drivers were working even though the Local Office was closed. Schifflett contended that although the clericals in the Local had the day off, many Business Agents worked that day.

There is also evidence that Mr. Cremen and Mr. Schifflett had a confrontation at a Local Union meeting on January 13, 1991 over facts related to the decision on Mr. Cremen's eligibility for delegate. At that meeting, Mr. Cremen alleges that he raised facts that contradicted the position of the Local before the Election Officer and that Schifflett admitted that the facts were accurate.<sup>1</sup>

Cremen alleges that five days after the Union meeting, on January 18, 1991, Schifflett telephoned his cousin, Edward Cremen, who is the only other driver currently employed by Songer Construction. He alleges that Schifflett told his cousin he intended to replace Cremen as Union Steward because Cremen had made him look "like an ass" at the Union meeting and because Cremen's father (the former Secretary-Treasurer of the Local) had spoken with a lawyer in the Office of the Election Officer to provide facts about Cremen's delegate eligibility.

An investigator for the Election Officer was able to speak to two members whose names were supplied by Cremen as witnesses.<sup>2</sup> Mark Linton states that Bob Cremen repeatedly and vehemently criticized the performance of Gene Schifflett as the Local's Secretary-Treasurer. He compared Schifflett's performance negatively to the prior performance in that office of Cremen's father. In Linton's words, Cremen was always "bad mouthing" Schifflett.

Louis Betton stated that he had no knowledge of the relationship between Schifflett and Cremen but accompanied Cremen when Cremen met with Schifflett to discuss the reasons for Cremen's removal as steward. Betton recalls Schifflett stating at that meeting that the reasons for Cremen's removal as steward was that Cremen was "bad mouthing" the Union for being closed on Veterans Day -- which was beyond his

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<sup>1</sup>Mr Cremen raised these facts, allegedly on the basis of conversations that he had with his father, the former Secretary-Treasurer of the Local. Mr. Cremen did not appeal his disqualification as a delegate candidate even though he had that right and presumably his access to his father's information did not increase or decrease during this period of time. Since Mr Cremen has therefore waived his argument on his disqualification, we do not rule in this case on whether the facts he allegedly presented at this meeting would have changed the result in the original case.

<sup>2</sup>One member whose name was supplied by Cremen could not be located; the fourth member never responded to the Election Officer's calls.

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authority as steward. Schifflett also said he didn't need a good reason to remove Cremen -- he could do it at his whim. Mr. Betton's opinion is that Cremen did a good job as steward.

The election in this Local was held by mail ballot. The ballots were mailed on January 8, 1991, and counted on February 1, 1991. Mr. Cremen was removed from his Steward's position on January 28, 1991. It is highly unlikely, therefore, that Mr. Cremen's removal had any impact on the delegate election. Moreover, Mr. Cremen does not allege that he was removed from his position by virtue of his campaign activities for the individual who ran (and lost) in the election against the slate composed of incumbent union officers.

The timing of Mr. Schifflett's action in this case, however, raises a strong inference that he acted because of Mr. Cremen's participation in the delegate selection process and because of his actions with respect to the protest over his eligibility. Both of these activities are protected by the Election Rules. The right to run for union office set forth in Article VIII, §10 of the *Rules* includes the right to do so without fear of retaliatory action. The same right attaches to the filing and pursuit of protests under Article XI of the *Rules*.

Substantive federal labor law provides little protection to appointed union officials even with respect to retaliation taken against them due to their intra-union political positions and activities. Dismissal from an appointed position because of a personality conflict is clearly not prohibited. See, e g , Finnegan v. Leu, 456 U.S. 431 (1982); Franza v. Teamsters Local 671, 869 F 2d 41 (2nd Cir. 1989); Cehaich v. Auto Workers, 710 F 2d 234 (6th Cir. 1983); Cotler v. Owens, 753 F.2d 223 (2nd Cir. 1985); Tucker v. Bieber, 131 LRRM 2979 (E D. Mich. 1989).


The evidence herein shows that there is longstanding animosity between Cremen and Schifflett, with both individuals being leaders in opposing political factions within the Local. Undoubtedly, this longstanding animosity was a factor in Cremen's dismissal. Further, the Election Officer's investigation revealed that this animosity increased during January, 1991. The incidents alleged by Mr. Schifflett to explain his decision to remove Cremen occurred in the early part of January, 1991. However, the evidence is insufficient to show that Mr. Cremen was dismissed as a Steward because he attempted to run as a candidate for delegate or participated in the protest process as opposed to being dismissed as a result of his personal conflicts with Mr. Schifflett.

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,

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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,

A handwritten signature in black ink, appearing to read "Michael H. Holland". The signature is stylized and cursive, written over the typed name below it.

Michael H Holland

MHH/mca

cc: Frederick B. Lacey, Independent Administrator  
Grant Crandall, Regional Coordinator

IN RE:	:	91 - Elec. App. - 101 (SA)
ROBERT CREMEN,	:	:
Complainant,	:	:
and	:	DECISION OF THE
GENE SHIFLETT,	:	INDEPENDENT
IBT LOCAL UNION NO. 311	:	ADMINISTRATOR
Respondents.	:	:

This matter arises out of an appeal from a March 11, 1991, decision of the Election Officer in Case No. [REDACTED]. A hearing was held before me on March 15, 1991, at which the following persons attended: Gene Shiflett, Secretary-Treasurer of Local 311; Stewart Shipeer, Business Agent for Local 311; Kenneth Kelm, President of Local 311; and Ed Cremen, a member of Local 311. In addition, the complainant, Robert Cremen and John J. Sullivan (on behalf of the Election Officer), were heard at the hearing by way of telephone conference.

The complainant, a member of Local 311, was removed from his position as Shop Steward on January 28, 1991, by Secretary-Treasurer Shiflett. The complainant alleges that he was removed in retaliation for his seeking to be nominated as a delegate to the 1991 IBT International Convention and his filing of a protest concerning his eligibility to run as a delegate. Secretary-

Treasurer Shiflett claimed that he removed Mr. Cremen as Steward because of Mr. Cremen's failure to perform the duties of Shop Steward in a satisfactory manner.

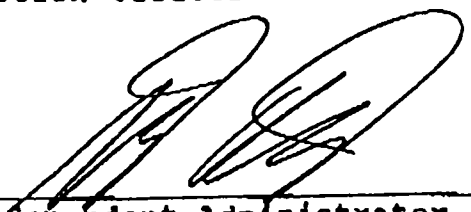
It is not in dispute that Mr. Cremen was removed from his position as Shop Steward approximately two months after he was nominated and seconded to run as a delegate candidate. Following his nomination, the Election Officer ruled that Mr. Cremen was ineligible to hold the position of delegate. Mr. Cremen did not appeal the eligibility determination of the Election Officer.

There is much animosity between Mr. Cremen and Secretary-Treasurer Shiflett. In fact, some of this animosity can be traced to a long standing disagreement between Secretary-Treasurer Shiflett and Mr. Cremen's father, the former Secretary-Treasurer of Local 311.

Mr. Cremen points only to the timing of his removal in support of his contention that his removal was retaliatory. Notwithstanding the timing of the removal, it is clear that Mr. Shiflett removed Mr. Cremen, not because he sought the position of delegate, but rather in light of the history between the two. What we have here is nothing more than intra-Union in-fighting unrelated to the delegate election process. As stated by the Election Officer in his Summary:

Adverse action taken against a union member because of factors unrelated to the election process are beyond the scope of jurisdiction of the Election Officer. Indeed, the federal labor laws generally do not protect appointed union officials from intra-union politics and the fall-out that may adversely affect them. Removal from an appointed union position because of personality conflicts or political rivalry is not prohibited.

Accordingly, the decision of the Election Officer is affirmed in all respects.



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

Dated: March 19, 1991