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Election Officer

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March 25, 1991

VIA UPS OVERNIGHT

Archie L Long
1930 Fort Worth Street
Grand Prairie, Texas 75050

T C Stone
Secretary-Treasurer
IBT Local Union 745
1007 Jonelle Street
Dallas, Texas 75217

Re: Election Office Case No. P-448-LU745-SOU

Gentlemen

A pre-election protest was timely filed pursuant to Article XI, Section 1 of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") In his protest, Archie Long alleges that he has been discharged by Roadway Express and the Union has failed to represent him because of his election campaign activity.

The investigation discloses the following facts Long has been employed by Roadway Express for twelve years He has openly and visibly campaigned on behalf of a slate for delegate and alternate delegate candidates opposing the slate headed by Local 745 Secretary-Treasurer T C Stone¹

On October 29, 1990 he was discharged by Roadway for an incident that occurred on October 19, 1990 Roadway's reason for the discharge was that Long had engaged in on-the-job sexual harassment of a female employee of Roadway On November 5, 1990 Local 745 grieved Long's discharge On December 3, 1990 the grievance was heard by the Multi-State Grievance Committee and the Committee deadlocked The Local advanced the grievance to the Area Deadlock Committee, where it was heard on January 21, 1991 That Committee denied the grievance Long was present at both grievance hearings

The incident that gave rise to the discharge occurred on October 19, 1990 On that date, according to Long, he arrived at the San Angelo terminal at around 7 30 a m

¹Long was himself an announced candidate for delegate, but was ruled ineligible by the Election Officer

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After punching the clock, he took his bills and timecard into the office where Mrs Debbie Bean was working. Long was wearing a cap that says "To All Virgins, Thanks For Nothing " Long states that he has worn the cap for many years Long states that he and Mrs Bean then each exchanged some sexually suggestive jokes Before Long left on his trip, he left Mrs Bean with a cartoon that contains graphic sexual material When Long arrived at the terminal the evening of the 19th, there was a note on his paycard from Bean, stating that she did not appreciate the cartoon

The investigation shows that on the date she received the cartoon, February 19, 1990 Bean complained to her supervisor about Long's actions Bean denies that she exchanged jokes with Long or invited him in any way to share the cartoon with her Long and Bean had never met prior to October 19, 1990 ?

There is no evidence independent of the discharge of employer hostility to Long's campaign activities² The Election Officer concludes that while Long has a demonstrated visible history of campaign activity, Roadway has established a legitimate reason for Long's discharge, even in the absence of his campaign activity Roadway has consistently disciplined its employees for engaging in conduct similar to Long's conduct on February 19, 1991 While the investigation disclosed instances of disciplinary action short of discharge in certain cases, this evidence is insufficient, by itself, to show that the employer's discharge of Long was primarily motivated by Roadway's hostility to Long's election-related activities

Long also alleges that the Union failed to properly represent him in the contractual grievance procedure because of his campaign activities The investigation reveals, however, that the Local presented a defense of Long before two arbitration panels The Election Officer has reviewed the transcripts of the panel proceedings and does not find that the Local Union's case was perfunctory or other than competent No other evidence was presented by Long or adduced by the Election Officer which shows that Local 745 discriminated against Long because of his election-related activity.

Based on the foregoing, 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 & 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,

²In June and July 1990, Long's truck was vandalized and his truck windows were shot out Long contends that these incidents were in retaliation for his campaign activities Assuming these contentions to be true, there is no evidence to link these incidents with the Employer or with the Local

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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,



Michael H Holland

MHH/mca

cc Frederick B Lacey, Independent Administrator
Larry R Daves, Regional Coordinator

IN RE:

ARCHIE L. LONG

and

ROADWAY SERVICES, INC.

and

IBT LOCAL UNION NO. 745

91 - Elec. App. - 131 (SA)

DECISION OF THE
INDEPENDENT
ADMINISTRATOR

This matter arises out of an appeal from a March 25, 1991, decision of the Election Officer in Case No. [REDACTED]. Due to surgery undergone by the complainant, all parties consented to adjourning the hearing in this matter until April 22, 1991. On that date, a hearing was held before me by way of telephone conference at which the following persons were heard: the complainant, Archie L. Long; Secretary-Treasurer of Local 745, T.C. Stone; John J. Sullivan, on behalf of the Election Officer; and Larry Daves, the Regional Coordinator.

Mr. Long is a member of Local 745. Mr. Long was discharged from his employment with Roadway Services, Inc. ("Roadway") on October 19, 1990, for alleged sexual harassment. Mr. Long contends that his discharge was actually motivated by his campaign activity.

Roadway refused to participate in the hearing.¹

Mr. Long has been employed by Roadway for twelve years. Mr. Long has openly and visibly campaigned on behalf of a slate of delegate and alternate delegate candidates opposing the slate headed by Local 745 Secretary-Treasurer T.C. Stone. The incident that gave rise to Mr. Long's discharge occurred on October 19, 1990. As explained in the Election Officer's decision of March 25, 1991:

On that date, according to Long, he arrived at the San Angelo terminal at around 7:30 a.m. After punching the clock, he took his bills and timecard into the office where Mrs. Debbie Bean was working. Long was wearing a cap that says "To All Virgins, Thanks For Nothing." Long states that he has worn the cap for many years. Long states that he and Mrs. Bean then each exchanged some sexually suggestive jokes. Before Long left on his trip, he left Mrs. Bean with a cartoon that contained graphic sexual material. When Long arrived at the terminal the evening of the 19th, there was a note on his paycard from Bean, stating that she did not appreciate the cartoon.

The investigation shows that on the date she received the cartoon, February 19, 1991, Bean complained to her supervisor about Long's actions. Bean denies that she exchanged jokes with Long or invited him in any way to share the cartoon with her. Long and Bean had never met prior to October 19, 1991.

¹ Apparently, Roadway's counsel had some conversation with the Election Office in which it denied that the Election Officer had jurisdiction over it. Roadway also claimed that its discharge of Mr Long was based solely on the incident of sexual harassment. It is now settled that both the Independent Administrator and the Election Officer have jurisdiction over employers. See In Re: McGinnis, Decision of the Independent Administrator, 91 - Elec. App. - 43 (January 23, 1991), aff'd, United States v. IBT, 88 Civ. 4486 (DNE), slip op. (S.D.N.Y. April 3, 1991).

While Mr. Long has a history of open campaign activity, there is no evidence of Roadway's hostility to Long's political affiliations. In this regard, it should be noted that although Mr. Long's truck was vandalized in June or July of 1990, in presumed retaliation to his politics, there is no evidence to link these incidents with Roadway or with the Local. In fact, the Election Officer thoroughly investigated these incidents with the aid of the FBI. Mr. Long cooperated in that investigation. Moreover, Mr. Long stated at the hearing before me that the person he strongly suspects to be responsible for the vandalism is a fellow Local Union member, and not a management employee of Roadway or a Local Union officer.

Mr. Long filed a grievance regarding his discharge. He was represented by the Local in the grievance proceedings. Mr. Long's grievance was eventually denied. Mr. Long also filed an unfair labor practice charge against Roadway and the Local with the National Labor Relations Board. The Board declined to issue a complaint.

The framework for resolving a protest such as this one is set forth in the Election Officer's Summary as follows:

In his Decision in In re Charles Coleman and Advance Transportation Company, 90 - Elec. App. - 18 (SA) (Dec. 4, 1990), the Independent Administrator set forth the framework for adjudicating "mixed motive" discharge cases. Applying the test adopted by the National Labor Relations Board in Wright Line, Inc., 251 NLRB 1083, 105 LRRM 1169 (1980), enf'd, 662 F.2d 889 (1st Cir. 1981), cert. denied, 455 U.S. 989 (1982), the Independent Administrator employed a two-step inquiry. First he determined whether the employee had made a prima facie

showing sufficient to support an inference that his exercise of protected rights was a "motivating factor" in the employer's decision. If so, the burden shifts to the employer to demonstrate that it would have made the same decision in the absence of the protected conduct.

Applying this standard, the Election Officer found that:


In this case, Mr. Long made out a prima facie case by showing that his campaign activity was conspicuous and well known to Roadway and that on three occasions prior to his discharge, his car was vandalized in presumed reaction to his political position and campaign activities.

The Election Officer found, however, that "Roadway's decision to discharge Mr. Long would have been made regardless of his campaign activity."

While I agree with the Election Officer's outcome, I do not agree with his analysis. As already noted, the Election Officer, recognized that there was no evidence of any hostility directed to Mr. Long by Roadway regarding his campaign activity. In fact, there was no evidence that Roadway had reacted negatively to anyone affiliated with Mr. Long. Cf. In Re: Coleman (Wherein the employer had an overly restrictive campaign policy; had previously disciplined another employee for campaigning; and had, through a representative, commented on Coleman's campaign buttons just 20 minutes before Coleman's termination). Thus, it cannot be said that Mr. Long has "made a prima facie showing sufficient to support an inference that his exercise of protected rights was a 'motivating factor' in the employer's decision." While Mr. Long's truck was the object of vandalism, there is no suggestion that Roadway was responsible for that vandalism.

Since Mr. Long has not met his prima facie burden, there is no need to shift the burden to Roadway to "demonstrate that it would have made the same decision in the absence of the protected conduct." Nonetheless, if the burden were to shift, I adopt the ruling of the Election Officer as outlined in his decision and as explained further in his Summary that: "The evidence was not sufficient to establish a discriminatory discharge by Roadway."²

Mr. Long also complained that the Local failed to represent him adequately in the grievance proceedings. Mr. Long suggested that the Local's failure to adequately represent him was connected to his political activity. I reject this suggestion. After reviewing the Local's submissions in the grievance proceedings, it cannot be said that the Local's representation was other than competent.



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

Dated: April 23, 1991

² At the hearing before me, there was some suggestion that Roadway violated its collective bargaining agreement by failing to first issue a warning letter to Mr. Long prior to discharging him. Whether or not Roadway was obligated to first issue a warning letter is not relevant to the inquiry at hand. The Election Officer found that Roadway would have followed the same path of discipline (regardless of whether it was a violation of the collective bargaining agreement), notwithstanding Mr. Long's political affiliation and campaign activity.