

OFFICE OF THE ELECTION OFFICER  
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
25 Louisiana Avenue, NW  
Washington, DC 20001

Michael H. Holland  
Election Officer

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September 5, 1991

**VIA UPS OVERNIGHT**

Mark Serafinn  
50 North St.  
Sauneman, IL 61769

Gerald F. Reilly  
President  
Teamsters Local 722  
344 N. 30th Road  
LaSalle, IL 61301

Consolidated Freightways  
Attn. John McGrath, Dispatch Mgr.  
P.O. Box 481  
Peru, IL 61354

**Re: Election Office Case No. P-815-LU722-SCE**

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules") by Mark R. Serafinn, a member of Local Union 722 and certified delegate to the 1991 IBT International Union Convention from Local 722. In his protest, Mr. Serafinn contends that his employer, Consolidated Freightways, failed to properly dispatch him, that is, provide him with work. Mr. Serafinn contends that Consolidated Freightways' refusal to dispatch him constitutes retaliation against him because of his participation as a delegate in the 1991 IBT International Union Convention and his participation in the International Union delegate and officer election processes. Mr. Serafinn claims that Consolidated Freightways improperly failed to dispatch him upon his return from attendance at the 1991 IBT International Union Convention and also on July 6, 1991. Mr. Serafinn contends that Consolidated's failure to properly dispatch him has resulted in the diminution of his wages and seeks recovery of those amounts.

By letter dated July 25, 1991, the Election Officer deferred resolution of this protest pending the determination of a grievance filed by Mr. Serafinn against Consolidated Freightways concerning Consolidated's failure to properly dispatch him. Based upon the evidence uncovered during his continuing investigation of this protest, and, in accordance with the reasons set forth *infra*, the Election Officer has determined that continued deferral is no longer appropriate and, thus, will decide this protest on its merits.

The protest was investigated by Regional Coordinator Peggy A. Hillman. Mr. Serafinn was and remains an open and active participant in the election processes mandated by the March 14, 1989 Consent Order and governed by the *Rules*. He was a successful candidate for delegate to the 1991 IBT International Union Convention,

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heading a slate committed to the candidacy of Ron Carey for General President of the IBT. All the members of Mr. Serafinn's slate were elected as delegates or alternate delegate to the 1991 IBT International Union Convention, defeating a slate headed by Local Union 722 President Gerald Reilly and including Jack Jacobs, the Local's Recording Secretary. Mr. Jacobs serves as the business agent representing Local 722 members employed by Consolidated Freightways, which includes not only Mr. Serafinn, but also all other members of his slate. Neither Mr. Reilly, Mr. Jacobs nor any other members of their slate supported or now support Mr. Carey's candidacy.

Mr. Serafinn has filed many protests pursuant to Article XI of the *Rules* and has been an active participant in protests field by the other Local 722 members who sought election as delegates or alternate delegates on his slate. Certain of these protests were directed against and/or implicated his employer, Consolidated Freightways, and John T. McGrath, the Dispatch Operations Manager for Consolidated Freightways at the Peru, Illinois facility where Mr. Serafinn works. See, e.g. Election Office Case Nos. P-105-LU722-SCE and P-501-LU722-SCE.

Mr. Serafinn does not have a regular work schedule at Consolidated. Rather, he works on a call or dispatch system whereby he is called when Consolidated has freight that is to be shipped. He and all other similarly situated employees of Consolidated, approximately 378, are assigned work on a rotating basis. The transport operator (or driver) whose name appears at the top of the "dispatch sheets" is the one dispatched to handle the next available job. That driver's name then goes to the bottom of the list; he will not receive another dispatch until all other transport operators have had an opportunity to work. The wages received by all transport operators, including Mr. Serafinn, are dependent upon not only the number of jobs to which they are assigned but the nature of the particular assignments they obtain; pay is dependent upon both the number of hours worked and the number of miles driven.

When a transport operator is unavailable when called to accept the proffered assignment, that operator's name goes to the bottom of the list. He is treated as if he had accepted the job and accordingly will not receive another dispatch until all other transport operators on the list have been offered a job assignment. The only exception is when the transport operator is on excused Union business leave at the time his name comes to the top of the assignment list. If the operator is on excused Union business leave at that time, he "floats"; the driver's name remains at the top of the list and he offered the next assignment available after his return from the excused Union business leave.

As noted above, Mr. Serafinn was a certified delegate to the 1991 IBT International Union Convention. By letter April 15, 1991, the President of the Local, Gerald Reilly, wrote to John McGrath, the Manager of Dispatch Operations at the

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Consolidated facility at which Mr. Serafinn is employed, to request that Mr. Serafinn be excused from work for the purpose of attending the Convention. More precisely, Mr. Reilly asked that Mr. Serafinn and his fellow delegates and alternate delegate "be excused for Union business from Saturday, June 22, 1991 to Monday, July 1, 1991" (emphasis added). Attendance at the 1991 IBT International Union Convention by a certified delegate is obviously Union business and has been so held by both the Election Officer and the Independent Administrator on numerous occasions. See also Advisory Regarding Convention Expenses, issued April 19, 1991. Mr. Serafinn was, in fact, granted leave by Consolidated. However, upon his return from leave, he was placed at the bottom of the dispatch list; he was not permitted to "float."

Mr. McGrath claims that Mr. Serafinn was placed at the bottom of the dispatch list upon his return from the Convention because the letter seeking that he be granted a leave to attend the Convention did not use the word "float." Mr. McGrath states that Local Union 722 only asked that Mr. Serafinn be granted leave. Since Local 722 did not ask that he be allowed to float during such leave, the company, Mr. McGrath maintains, properly placed him at the bottom of the dispatch list upon his return from the 1991 IBT International Union Convention. The Election Officer's investigation determined, however, that Consolidated has on numerous occasions granted excused Union business leaves and allowed the affected employe to float during the period of such leave although the request for leave did not contain the magic word "float." The letter sent by Local Union President Reilly requesting leave specifically uses the words "Union business." Further, Mr. McGrath admits that he does not consistently require the Local to use the word float in its leave request in order for the member to avoid being relegated to the bottom of the dispatch list. No factual or legal basis exists for Consolidated placing Mr. Serafinn at the bottom of the dispatch list upon his return from the 1991 IBT International Union Convention.

With respect to Mr. Serafinn's claim that Consolidated also improperly failed to dispatch him on July 6, 1991, the company admits that an error was made. Mr. McGrath states that, "it appears that dispatch failed to enter Mr. Serafinn in his proper order upon completion of the tour of duty." This failure, as admitted by the company, resulted in Mr. Serafinn not being offered the appropriate job and may have resulted in a reduction in his wages. Consolidated's only response to this admitted error is that the matter can and will be resolved through the grievance machinery of its collective bargaining agreement with the IBT.

The company suggests that the Election Officer continue to defer his ruling on this protest pending the resolution of a grievance filed by Mr. Serafinn regarding these same alleged improper failures to dispatch. The Election Officer declines to do so. As noted above, Mr. Serafinn is and has been an active participant in the elections over which the Election Officer has jurisdiction and which are governed by the *Rules*.

Further, Mr. Serafinn and his fellow delegates and alternate delegates have received a number of adverse decisions from Consolidated Freightways. All of these matters have arisen since their participation in the 1991 IBT International Union Convention. While the Election Officer has not found that all of the actions taken against Mr. Serafinn and his fellow delegates and alternate delegates were wrongful, see Election Office Case Nos. P-809-LU722-SCE, P-810-LU722-SCE and P-812-LU722-SCE, no basis appears for other actions taken against them. See Election Office Case Nos. P-820-LU722-SCE, P-830-LU722-SCE and P-831-LU722-SCE, decisions issued today. Further, while the Election Officer is aware that mistakes can occur, multiple mistakes directed against the same individual or group of individuals are less likely. Consolidated admits that at least one of the allegations lodged against it by Mr. Serafinn is meritorious. There is no reason under the collective bargaining agreement or otherwise for the company to fail to rectify this error; a grievance decision is not necessary for an admitted wrongdoing to be corrected.

The evidence establishes that Mr. Serafinn is and has been an open and active participant in election and related activities governed by the *Rules*. Mr. Serafinn has filed protests under the *Rules* against or implicating Consolidating Freightways. The evidence further established that there is no factual or legal basis for the company's placement of him on the bottom of the dispatch rotation list, either after his return from the 1991 IBT International Union Convention or on July 6, 1991.

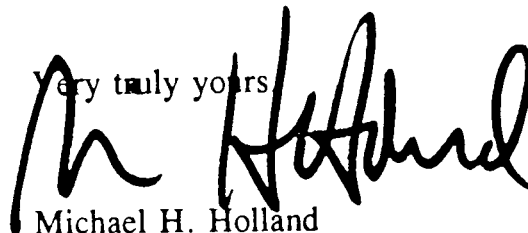
Mr. Serafinn has established a *prima facie* case that the actions taken by Consolidated with respect to his dispatches were influenced by his participation in the processes protected by the *Rules*. The company has presented no probative evidence in rebuttal. Accordingly, the Election Officer GRANTS the protest.

To remedy its wrongful failure to properly proffer Mr. Serafinn available job opportunities, Consolidated Freightways is directed to make Mr. Serafinn whole, that is, to pay him the difference, if any, between the wages he earned and the wages he would have earned if he had been properly dispatched. Within fifteen days of the date of this decision, Consolidated shall submit to Mr. Serafinn and simultaneously to the Election Officer an accounting delineating the jobs Mr. Serafinn would have received, and the wages he would have earned for performing such work, but for Consolidated's wrongful failure to properly dispatch Mr. Serafinn as determined by this decision. Such accounting shall also include a delineation of the jobs to which Mr. Serafinn was actually dispatched and the wages he in fact received during the relevant period of time. Consolidated shall include with the accounting sent to Mr. Serafinn a check for the difference in wages and shall include with the accounting sent to the Election Officer appropriate documentation demonstrating that it has forwarded such back pay monies to Mr. Serafinn.

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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

A handwritten signature in black ink, appearing to read "M. Holland", written over the typed name "Michael H. Holland".

Michael H. Holland

MHH/cb

cc: Frederick B. Lacey, Independent Administrator

Peggy A. Hillman, Regional Coordinator

Robert Stetson, General Counsel  
Consolidated Freightways, Inc.  
3240 Hillview Avenue  
Palo Alto, CA 94304

IN RE:	:	91 - Elec. App. - 192 (SA)
MARK SERAFINN	:	
and	:	DECISION OF THE
CONSOLIDATED FREIGHTWAYS CORP.:	:	INDEPENDENT
and	:	ADMINISTRATOR
IBT LOCAL UNION NO. 722	:	

This matter arises as an appeal from a decision of the Election Officer in case No. P-815-LU722-SCE. A hearing was held before me by way of telephone conference at which the following persons were heard: Jeffrey L. Madoff, on behalf of Consolidated Freightways Corp.; the Complainant, Mark Serafinn; Susan Jennik on behalf of Mr. Serafinn; John McGrath, Consolidated Freightways' Dispatch Manager; Gerald Reilly, President of Teamsters Local 722; and John Sullivan and Barbara Hillman on behalf of the Election Officer. The Election Officer also submitted a written summary in accordance with Article XI, Section 1.a.(7) of the Rules for the IBT International Union Delegate and Officer Election (the "Election Rules"). In addition, post-hearing submissions were received.

**BACKGROUND**

Mr. Serafinn alleges that Consolidated Freightways has taken adverse action against him because of his participation in the 1991 IBT Convention and/or his political activity.

Mr. Serafinn is a member of Local 722 and serves as a Steward for that Local. He is employed by Consolidated Freightways in its Peru, Illinois facility as a driver. Mr. Serafinn is an active supporter of Ron Carey's candidacy and the candidacy of other members of the Ron Carey Slate. Mr. Serafinn also served as a delegate on behalf of Local 722 to the 1991 IBT Convention.

When Mr. Serafinn ran as a delegate, he was aligned with a slate of candidates which was opposed by a slate headed by Local 722's President Gerald Reilly. Mr. Reilly and the other members of his slate did not support the candidacy of Ron Carey. Mr. Reilly's slate included Mr. Jacobs, the Local's Recording Secretary and Business Agent with responsibility for Local 722 members employed by Consolidated Freightways.

In addition to his campaign activity Mr. Serafinn has been active in the protest process established by Article XI of the Election Rules. He has filed several protests himself and has participated in protests filed by other members of his Slate.

Mr. Serafinn, like all drivers with Consolidated Freightways, works on an "as needed basis." The drivers are dispatched on a rotating basis. When there is a trip to be taken, the driver at the top of the list is called. Upon his return from his assignment, that driver's name then goes to the bottom of the list. The next trip is given to the driver whose name has moved up to the top of the list.

If a driver makes it to the top of the list and is called, but is unavailable for a trip, his name goes to the bottom of the list as if he had taken the job. However, if a driver is unable to accept the offer of the trip because he is away from work on excused Union business, that driver "floats" at the top of the list. In other words, the driver's name remains at the top of the list until he returns from his Union business leave. As is explained further below, Consolidated Freightways alleges that the "float" policy does not apply to extended leaves, i.e., leaves greater than one or two days.

The wages earned by drivers are dependent upon not only the number of dispatches but also the particular jobs assigned. The driver's pay is based both on hours worked and miles driven. Losing the opportunity for a particular job assignment may thus lead to a decrease in pay even if the total number of assignments does not decrease.

It is not disputed that because Mr. Serafinn was a certified delegate to the IBT Convention in June of 1991, he was entitled to an official Union business leave to attend the Convention, and in fact was granted such a leave by Consolidated Freightways.

On his return from the Convention, Consolidated Freightways placed Mr. Serafinn on the bottom of the dispatch list rather than allowing him to "float" at the top of the list, as Mr. Serafinn claims he was entitled to do. As noted, Mr. Serafinn claims that



this action was taken in retaliation to his participation in the Convention and/or for his other political activity.

Mr. Serafinn also challenges Consolidated Freightways' failure to dispatch him on July 6, 1991. Consolidated Freightways concedes that it made an error on July 6, and has indicated that its error will be resolved through the internal-Union grievance procedures.

#### **CONSOLIDATED FREIGHTWAYS' JURISDICTIONAL ARGUMENTS**

Consolidated Freightways objects to the jurisdiction of the Election Officer and the Independent Administrator to enforce the Election Rules against a non-consenting employer. Consolidated Freightways also argues that the Independent Administrator should abstain from duplicating the proceedings of the National Labor Relations Board ("NLRB"). Both the jurisdiction of the Election Officer and the Independent Administrator over private employers, and the independent nature of their mandate apart from the NLRB is now well settled. See In Re: McGinnis, 91 - Elec. App. - 43 (January 23, 1991), aff'd., United States v IBT, 88 Civ. 4486 (DNE), slip op., pp. 3-8 (S.D.N.Y. April 3, 1991).

#### **CONSOLIDATED FREIGHTWAYS' OTHER DEFENSES**

Consolidated Freightways argues that even if it is true that Mr. Serafinn should have floated at the top of the dispatch list and been offered the next available assignment after his return from the Convention, Mr. Serafinn would have nonetheless lost his

"float" status due to the fact that he did not return from the Convention in a timely manner.<sup>1</sup>

Consolidated Freightways also suggests that while drivers may be entitled to a "float" for a short Union business leave, i.e., a day or two, drivers are not entitled to "float" when on an extended business leave, such as the one week absence for the Convention.

While these rationales may have carried some weight if they truly represented the justification for Consolidated Freightways' actions, they are not the stated reason given for removing Mr. Serafinn from the "float". These rationales are nothing more than crafted post-hoc rationalizations authored by Consolidated Freightways' attorney.

In an August 13, 1991, letter to the Election Officer's Regional Coordinator, Consolidated Freightways Dispatch Operations Manager, Mr. McGrath, explained why Serafinn was not permitted to

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<sup>1</sup> In In Re: Serafinn, 91 - Elec. App. - 179 (SA) (August 23, 1991), the Independent Administrator found that the Convention ended Friday, June 28, 1991 and that Mr. Serafinn's duties as a delegate ended with the adjournment of the Convention. Thus, Serafinn was allotted all of Friday evening, all of Saturday and all of Sunday to return to Illinois, rest and return to work on Monday, July 1, 1991. Mr. Serafinn, however, did not report back to work until 11:00 p.m. on Tuesday, July 2, 1991. Mr. Serafinn received a warning letter from Consolidated Freightways stating that the period from Monday, July 1, 1991 until Tuesday, July 2, 1991, was neither excused nor authorized time off. The letter stated that the period of time off for Union business only extended to, but not through, Monday, July 1, 1991, and that, therefore, Mr. Serafinn should have reported back to work on that day. Although Mr. Serafinn filed a protest challenging the issuance of the warning letter, the Election Officer found no violation of the Election Rules, and, in his decision, the Independent Administrator affirmed the Election Officer's ruling.

"float" while at the Convention. Mr. McGrath stated that the Local Union's President, Mr. Reilly, only requested authorized "time off" for Mr. Serafinn and did not use the magic word "float" in his request. Mr. McGrath makes no mention of the fact that Mr. Serafinn returned from the Convention later than he should have, nor does Mr. McGrath suggest that Mr. Serafinn would not be entitled to a "float" for an extended leave. Thus, the rationalizations offered by Consolidated Freightways at the hearing and in its post-hearing submissions, are mere pretext.

Thus, we must examine the stated reason proffered by Dispatch Operations Manager McGrath -- the individual responsible for making the decision regarding Serafinn's "float". The Election Officer dismissed Mr. McGrath's stated reason in his Summary:

To begin with, Mr. McGrath's explanation is implausible on its face. Mr. McGrath offers no reason why a request for "Union business leave" should have to spell out the consequences that automatically flow from leave, i.e., the right to float until the completion of the Union business. There is no question that the request letter specifically sought leave for Mr. Serafinn for Union business. It is the collective bargaining agreement -- not the specific letter or the acquiescence of the specific manager involved -- which offers the right to float once the leave is granted. The implications of that request should have been obvious to Mr. McGrath.

If there were any doubts in the matter, the Election Officer's investigation put them to rest by disclosing that CF has on numerous occasions allowed an excused employee to float while he was on official Union business even though the opportunity to "float" was not specifically requested. Indeed, Mr. McGrath admitted that he has not consistently required the Local to use the magic "float" word in its leave requests. He just did so in this case.

I agree with the Election Officer's analysis. When held up to a true light the McGrath rationale also reveals itself as nothing more than a pretext.

Having offered no legitimate justification for its action against Serafinn, we are left with but one conclusion -- Consolidated Freightways has singled Serafinn out for disparate treatment because of his political activity.

As noted Mr. Serafinn is and has been an active and open participant in the IBT election and related processes. In fact, as also noted, Mr. Serafinn is no stranger to the protest and appeal process. His name has come before the Election Officer and the Independent Administrator on several occasions and both have had to remedy injustices leveled against Mr. Serafinn. See, e.g., In Re: Serafinn, 91 - Elec. App. - 186 (SA) (September 17, 1991) (Local improperly denied Mr. Serafinn authorized business leave to attend grievance proceedings); In Re: Serafinn, 91 - Elec. App. - 181 (SA) (September 6, 1991) (Local improperly withheld health and welfare benefits payments on behalf of Mr. Serafinn and his fellow delegates while at the Convention); In Re: Hanners, Election Office Case No. P-105/P-694-LU722-SCE (December 27, 1990) (Election Officer ordered the Local to request an unpaid leave of absence for Mr. Serafinn so that he could engage in campaign activities). That these injustices may have been carried out by the Local Union as opposed to Consolidated Freightways does not weigh heavily. As the Honorable David N. Edelstein has candidly recognized, "[e]mployers

may have developed comfortable relationships with incumbent IBT officers, and may not be anxious for new, and perhaps more assertive union representatives." United States v IBT, 38 Civ. 4486 (DNE), slip op., at p. 6 (S.D.N.Y. April 3, 1991). Given Consolidated Freightways' actions here, it is evident that its political interests are aligned with those of the incumbent Local Union leadership. In fact, Consolidated Freightways has been ordered to remedy retaliatory conduct against other members of Mr. Serafinn's slate. See, e.g., In Re: Hanners, Election Office Case No. P-831-LU722-SCE (September 5, 1991) (Election Officer ordered Consolidated Freightways to expunge warning letter from Mr. Hanners' records that was wrongfully issued).

Consolidated Freightways contends that the Election Officer has incorrectly concluded that its action regarding Mr. Serafinn constitutes a prima facie case of discrimination. However, the elements of a prima facie case -- an adverse action without a good reason taken against an employee engaged in protected activity -- are clearly present here. Given the inadequate basis for denying the float, and given the history of the treatment accorded Mr. Serafinn and the fellow members of his slate by the Local and Consolidated Freightways, one would have to shut his eyes to the obvious to conclude that Consolidated Freightways has not targeted Mr. Serafinn in this instance. The same holds true for the failure to dispatch Mr. Serafinn on July 6. Under the circumstances, this conduct cannot be viewed as the innocent "mistake" Consolidated

Freightways suggests.<sup>2</sup> As stated in In Re: Serafinn, 91 - Elec. App. - 186 (SA) (September 17, 1991), at p. 6:

To find otherwise would be to ignore the facts. As the Honorable David N. Edelstein has stated, the Rules For The IBT International Union Delegate And Officer Election (the "Election Rules") are the "linchpin" to "guarantee[ing] honest, fair, and free elections completely secured of harassment, intimidation, coercion, hooliganism, threats, or any variant of these, no matter under what guise." United States v. IBT, 742 F. Supp 94, 97 (S.D.N.Y. 1990). See Election Rules, Article VIII, Section 10 ("Freedom to Exercise Political Rights").

Examining the totality of the circumstances here, the conclusion that Consolidated acted in response to Mr. Serafinn's political activity "is inescapable." In Re: Schrader, 91 - Elec. App. - 124 (SA) (April 12, 1991), at p. 9.

Departing from a "totality of the circumstances" approach and following the more formal Wright Line test, the same conclusion is reached. The Wright Line test has previously been relied upon to evaluate allegations that a discharge or discipline was motivated, at least in part, by an employee's protected campaign activity. See In Re: Coleman, 91 - Elec. App. - 18 (SA) (December 14, 1990). As explained in Coleman:

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<sup>2</sup> To the extent Consolidated Freightways asserts that the Election Officer can not address the July 6 incident because it is the proper subject of the internal-Union grievance machinery; it is well settled that "the Election Officer has jurisdiction independent of the Grievance Committee" to address violations of the Election Rules. See In Re: Schrader, 91 - Elec. App. - 124 (SA) (April 12, 1991), at p. 4. See, also, In Re: Jenkins 91 - Elec. App. - 190 (SA) (September 23, 1991), at p. 6 ("The protest and appeal process set forth in the Election Rules is not a further appeal from the grievance process but rather is a separate mechanism designed to ensure a fair, honest and open election.")

The National Labor Relations Board has adopted a rule for resolving cases involving a "mixed motive." This rule, adopted by the Board in Wright Line, 251 NLRB 1083, 105 LRRM 1169 (1980), aff'd, 662 F.2d 899 (1st Cir. 1981), cert denied 455 U.S. 989 (1982), requires:

that the General Counsel 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.

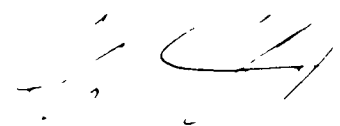
105 LRRM 1175. The Board's Wright Line test for resolving mixed motive cases was drawn from the Supreme Court's decision in Mt. Healthy City School District Board of Education v. Doyle, 429 U.S. 274 (1979). The Supreme Court upheld the Board's Wright Line analysis in NLRB v. Transportation Management Corp., 462 U.S. 393 (1983).

Consistent with the Wright Line standard,<sup>3</sup> the facts here clearly support an inference that Mr. Serafinn's political activity "was a 'motivating factor' in the employer's decision." Shifting the burden to Consolidated Freightways, it becomes readily apparent that it would not have taken the action it did, absent Mr. Serafinn's political conduct. As already discussed, Mr. McGrath's stated reason for the denial of the "float" was a pretext. Moreover, Consolidated Freightways' description of the July 6 incident as a mistake is tenuous at best, given the background developed here.

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<sup>3</sup> This is not to suggest that the Wright Line standard applies in a non-disciplinary context.

Accordingly, the decision of the Election Officer is affirmed  
in all respects.<sup>4</sup>



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

Date: September 26, 1991

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<sup>4</sup> Consolidated Freightways also challenged the timeliness of Mr. Serafinn's protest arguing that it was not filed within the time limitations set forth in Article XI, Section 1.a.(1) of the Election Rules. The possible delay of a few days in the filing of the protest does not preclude addressing the violations found here. Indeed, retaliation by an employer for political activity is one of the gravest offenses anticipated by the Election Rules. To avoid remedying such a situation due to an alleged short delay is simply not acceptable. The Election Rules encourages remedying the encroachment of political rights. See Article XI, Section 2 of the Election Rules which permits the Election Officer to investigate and address violations of the Rules "with or without a protest."