

OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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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-820-LU722-SCE
P-830-LU722-SCE

Gentlemen:

Two protests were 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 722 and certified delegate to the 1991 IBT International Union Convention from Local 722. The protest in Election Office Case No. P-820-LU722-SCE concerns the alleged failure of Mr. Serafinn's employer, Consolidated Freightways, to provide him with work. The protest in Election Office Case No. P-830-LU722-SCE concerns the alleged failure of the company to properly accrue Mr. Serafinn's prior work for purposes of granting him excused time off. The Election Officer investigation determined, however, that both alleged problems stemmed from a single incident, the failure of Mr. Serafinn to have been granted leave from work for Union purposes on July 16, 1991. Accordingly, the protests have been consolidated for decision.¹ The protests were investigated by Regional Coordinator Peggy A. Hillman.

¹By letter dated July 25, 1991, the Election Officer indicated that he was deferring his decision in Election Office Case No. P-820-LU722-SCE pending resolution of a grievance filed with respect to the issues raised in that protest. Based upon the facts uncovered during his continuing investigation of the protest, the Election Officer has determined, for the reasons discussed *infra*, to issue a decision at this time.

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Mr. Serafinn is and has been an 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 and the head of a slate of delegate and alternate delegate candidates committed to the candidacy of nominated General President candidate Ron Carey. He and his fellow slate members, all of whom were elected to delegate or alternate delegate positions, were opposed by a slate headed by Local Union 722 President Gerald Reilly. Mr. Reilly and the other members of his slate did not and do not support the candidacy of Mr. Carey. Mr. Reilly's slate included John V. Jacobs, the Local's Recording Secretary and the business agent with responsibility for Local 722 members employed by Consolidated Freightways. Mr. Serafinn, as well as all other elected delegates and alternate delegate from Local 722 are employed by Consolidated.

Mr. Serafinn does not have a regular work schedule at Consolidated. Rather, he, like all other transport operators, works as needed; they are called or dispatched for particular trips by the company. Transport operators are so dispatched on a rotating basis. When there is a trip to be taken, the transport operator at the top of the list is called. Upon his return from his assignment, that operator's name then goes to the bottom of the list. The next trip is given to the operator whose name has moved up to the first name on the list.

When a driver is called but is unavailable for a trip, his name goes to the bottom of the list as if he had taken the job offer. However, if an operator is unable to accept the offer of the trip because he is away from work on excused Union business leave, that operator "floats" at the top of the list, that is, that operator's name remains at the top of the list until he returns from his Union business leave. Accordingly, a transport operator who refuses a proffered trip for any reason other than excused Union business leave loses the opportunity to work until such time as all other transport operators have been given an opportunity to drive. However, an operator who is unavailable for an assignment because of excused Union business leave remains the first operator to be called for an available trip after the conclusion of such leave; he need not wait for all other operators to be given a job opportunity before he is dispatched on a trip.

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

After a transport operator has accumulated 18 consecutive dispatches, he is entitled to an 80-hour leave of absence. Consecutive dispatches are interrupted by an operator's unavailability for assignment in much the same way as the operator's right to

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assignment is downgraded by his unavailability to take a dispatch. If a driver when called is unavailable for a trip, his name not only goes to the bottom of the list, but his dispatch accrual is also interrupted. Before the operator is entitled to the 80-hour unpaid leave, he must accrue an additional 18 consecutive dispatches; the dispatches accrued prior to the interruption are no longer considered. Again, there is an exception with respect to excused Union business leave. An operator on excused Union business leave not only "floats" at the top of the list for job assignment until his return from such leave, but his accrual of consecutive dispatches is not interrupted by his failure to accept an assignment which would have been available to him but for his excused Union business leave.

On July 16, 1991, a grievance meeting was held in Springfield, Illinois concerning grievances arising from the Peru, Illinois Consolidated Freightways facility where Mr. Serafinn is employed. Mr. Serafinn is also a steward elected to represent the Local 722 members employed at Consolidated's Peru facility. Among the items on the agenda at the meeting were three grievances, two in which Mr. Serafinn was the grievant and one involving the discharge of Consolidated employee Thomas Anderson.

Mr. Serafinn, as an elected steward of the IBT members employed at facility, asked Mr. Jacobs, his business agent, to request that his employer grant him leave for Union business in order that Mr. Serafinn might attend the grievance meeting. If such a request had been made, the Election Office investigation finds that Consolidated Freightways would have granted Mr. Serafinn an excused Union business leave, as it is required to do under the collective bargaining agreement, and Mr. Serafinn would have "floated" at the top of the dispatch list and would not have had his previously accrued dispatches interrupted. Mr. Jacob's refused to request that Consolidated grant Mr. Serafinn leave for Union business. Without such a request, Consolidated had no contracted obligation to place Mr. Serafinn on Union business leave and did not do so.

Mr. Serafinn attended the grievance meeting having obtained leave to do so, albeit not Union business leave. He was therefore unavailable to accept dispatches on July 16, 1991. As a result, Mr. Serafinn was placed at the bottom of the dispatch list. He was also denied a right to take 80 hours unpaid leave until he accrued an additional 18 consecutive dispatches.

Mr. Serafinn had made previous plans to utilize his 80-hour excused leave for purposes of campaigning for the election of nominated International Union Vice President candidate Leroy Ellis, a member of Ron Carey's slate, during the period from July 31, 1991 through August 2, 1991. His intentions in this regard were known to both the management of Consolidated Freightways as well as Mr. Jacobs. Because Mr. Jacobs refused to request excused Union business leave for Mr. Serafinn to attend the July 16,

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1991 grievance meeting, his prior accrued dispatches were nullified and Mr. Serafinn was forced to utilize vacation time to be able to participate in the previously planned campaign activities.

In Election Office Case No. P-094-LU722-SCE, also involving the refusal of Local Union 722 and Mr. Jacobs to request excused Union business leave for Mr. Serafinn, Local 722 contended that it only authorizes leave for Union business for stewards to attend meetings where the subject matter of the meeting concerns grievances of members represented by the steward. In this case, Mr. Jacobs contends that Mr. Serafinn was not entitled to a Union business leave because two of the grievances heard at the July 16, 1991 meeting concerned him as the grievant. Mr. Jacobs contends that a grievant, whether or not a steward, who attends a grievance meeting on his own behalf may be entitled to leave but not to a Union business leave.

One of the grievances heard at the July 16, 1991 meeting was the discharge grievance of Thomas Anderson. Mr. Serafinn as steward for IBT members employed at Consolidated's Peru facility participated on Mr. Anderson's behalf during Mr. Anderson's July 16, 1991 hearing. Mr. Jacobs contends that Mr. Serafinn's participation was unnecessary because he, Mr. Jacobs, was representing Mr. Anderson in fulfillment of his obligations as the business agent. The Election Officer's investigation determined, however, that Local 722 has previously requested Union business leave to enable Mr. Serafinn to participate in grievance matters involving Local 722 members for whom Mr. Serafinn serves as the steward, even when Mr. Jacobs has also represented such members.

No basis exists for treating Mr. Serafinn's request of Mr. Jacobs with respect to the July 16, 1991 meeting differently other than to disrupt Mr. Serafinn's planned election activity or otherwise retaliate against him for his partisan political positions. Mr. Jacobs, as previously noted, does not support the candidates who Mr. Serafinn supports for election to IBT International Union office and on whose behalf he was seeking to campaign. Accordingly, the Election Officer finds that Local Union 722 violated the *Rules* by the refusal of its Recording Secretary and business agent Jack V. Jacobs to request and obtain Union business leave for Mr. Serafinn to attend the July 16, 1991 grievance meeting held in Springfield, Illinois.

By letter dated July 25, 1991, the Election Officer deferred his decision in Election Office case No. P-820-LU722-SCE pending resolution of the grievance filed by Mr. Serafinn concerning his placement at the bottom of the dispatch list following his attendance at the July 16, 1991 State grievance meeting. The further investigation conducted with respect to that protest, as detailed in this decision, demonstrates that continued deferral is no longer appropriate. The basis for Consolidated Freightways' actions was that Mr. Serafinn had not been granted excused Union business leave for

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July 16, 1991. Mr. Serafinn had not been granted such leave because Mr. Jacobs, Local 722's Recording Secretary and Mr. Serafinn's business agent, refused to request such leave. While the Election Officer in this decision finds that the failure of Local 722 and Mr. Jacobs to request a Union business leave for Mr. Serafinn violated the *Rules*, it is the company's actions which will be reviewed at the grievance hearing. The decision issued here by the Election Officer is against Local Union 722. The propriety of Local Union 722's actions is not within the jurisdiction of the grievance panel.

In accordance with foregoing, the protests are GRANTED. Local Union 722 is ordered to make Mr. Serafinn whole for the losses he suffered by reason of the Local's failure to obtain for him excused Union business leave for July 16, 1991. Mr. Serafinn suffered in two respects: first, he was placed at the bottom of the dispatch list and thus missed an opportunity or opportunities to be dispatched leading, perhaps, to a pay loss, and second, he was deprived of an opportunity to utilize what should have been excused time off for campaigning purposes.

Local Union 722 is first directed to compensate Mr. Serafinn for the monetary loss, if any, which he suffered by reason of being placed at the bottom of the dispatch list. Local Union 722 shall obtain from Consolidated Freightways and provide Mr. Serafinn, within ten (10) days of the date of this decision, with an accounting of the monies, if any, he lost by reason of being placed at the bottom of the dispatch list. A copy of such accounting should be simultaneously provided to the Election Officer and to the Regional Coordinator Peggy A. Hillman.

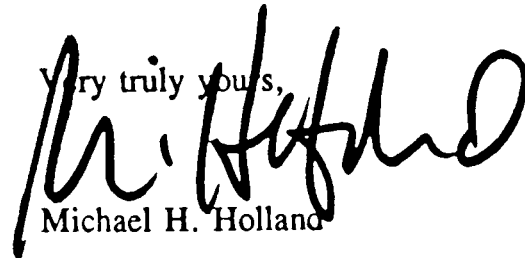
If Mr. Serafinn has no disagreement with the accounting provided him by Local Union 722, he shall within 10 days of receiving such accounting so notify Local Union 722 and simultaneously notify the Election Officer. Within 5 days of its receipt of such notification, Local Union 722 shall pay Mr. Serafinn the monies due him as set forth in the accounting provided him by the Local. An affidavit demonstrating that such payment has been made shall be simultaneously filed with the Election Officer. If Mr. Serafinn has any disagreements with the accounting submitted to him by Local 722, he shall within 5 days of receiving such accounting notify the Regional Coordinator of his disagreement, detailing the basis of such disagreement. Any such disagreement shall be resolved by the Election Officer, with notification to both Mr. Serafinn and Local Union 722. Within 5 days of the decision of the Election Officer resolving any disagreement, Local 722 shall pay Mr. Serafinn the monies the Election Officer finds to be due and owing. The payment should be simultaneously documented by an affidavit filed with the Election Officer.

To make Mr. Serafinn whole for his inability to take excused time off to engage in campaign activities on July 31, August 1, and August 2, 1991, Local Union 722 shall, upon request from Mr. Serafinn, obtain from Consolidated Freightways a three-day or

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72-hour Union business leave for Mr. Serafinn. (See Election Office Case No. P-094-LU722-SCE). Such leave may be utilized by Mr. Serafinn for campaign activities or may be utilized by Mr. Serafinn for vacation purposes, to compensate him for the vacation he was required to utilize during the period from July 31, 1991 through August 2, 1991.

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,

Michael H. Holland

MHH/mjv

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

P-830 722/SCE

SEP 17 1991

YMH
BTH
JJS
p/Hollman

IN RE:

MARK SERAFINN

and

GERALD F. REILLY

and

LOCAL UNION NO. 722

91 - Elec. App. - 186 (SA)

DECISION OF THE INDEPENDENT ADMINISTRATOR

This matter arises out of an appeal from a decision of the Election Officer in Case Nos. P-820-LU722-SCE and P-830-LU722-SCE. A hearing was held before me by way of telephone conference at which the following persons were heard: the complainant, Mark Serafinn; Susan Jennik, on behalf of Mr. Serafinn; John V. Jacobs, Local 722's Business Agent and Recording Secretary; Bill Cavanaugh, Local 722's attorney; and John J. Sullivan and Barbara Hillman, on behalf of the Election Officer.

Mr. Serafinn alleges that Local 722 discriminated and retaliated against him because of his political activities and his support of the candidacy of Ron Carey for International General President.

Mr. Serafinn is a member of Local 722 and serves as a Steward for that Local. He is employed by Consolidated Freightways Corporation 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 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.

Mr. Serafinn, like all other drivers with Consolidated, works on a "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

This is the continuation of Kelly

list. In other words, the driver's name remains at the top of the list until he return from his Union business leave.¹

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.

After a driver has accumulated 18 consecutive dispatches, he is entitled to an 80-hour leave of absence. A driver's consecutive dispatches may be interrupted if he is called for a particular job, but is unavailable, and he is then dropped to the bottom of the list. Again, however, there is an exception for an excused Union business leave. If a driver is called, but is on an excused leave, he will again "float" at the top of the list and his consecutive dispatches will not be interrupted.

On July 16, 1991, a grievance meeting was held in Springfield, Illinois concerning grievances arising from Consolidated's Peru, Illinois facility. Among the items on the agenda at the meeting were three grievances, two in which Mr. Serafinn was the grievant

¹ In a separate appeal in Case No. P-815-LU722-SCE, Consolidated has alleged that the "float" policy does not apply to extended leaves, i.e., leaves greater than one or two days. Since the leave at issue here is a one day leave, it is not necessary to resolve the issue of the treatment to be accorded extended leaves at this time.

and one involving the discharge of another employee, a Mr. Thomas Anderson.

Mr. Serafinn had attended grievance meetings in Springfield, Illinois in the past. When he attended these meetings, Mr. Serafinn would inform Mr. Jacobs that he was going. Mr. Serafinn also noted in Consolidated Freightway's "inbound sheet" that he was on an "Article IV float." At the conclusion of the grievance meeting, the Consolidated Freightway's representatives would be notified that Mr. Serafinn was once again available for work. This procedure always resulted in Mr. Serafinn securing a "float" position on the work availability list.

At the hearing, Local 722 and Mr. Jacobs suggested that in the past Local 722 did not take any action to secure Mr. Serafinn's "float" position. It was suggested that if Mr. Serafinn wanted a "float," he had to pursue it himself. Such representations are wholly inconsistent with Mr. Serafinn's past experiences. It is clear that in the past Mr. Jacobs took some action in securing a Union leave for Mr. Serafinn when he attended a grievance meeting. This always resulted in Mr. Serafinn being placed on the "float." This past practice was confirmed by the Election Officer's independent investigation.

Inconsistent with its past practice, the Local, however, did not take any action in regards to Mr. Serafinn's July 16, 1991, attendance at the grievance meeting. Thus, Mr. Serafinn was unable to secure his "float" on the work availability list and was dropped

to the bottom of that list. As a result, Mr. Serafinn's 18 consecutive dispatches were also interrupted.

Mr. Serafinn had made previous plans to utilize his 80-hour leave for purposes of campaigning for the election of nominated International Vice-President candidate Leroy Ellis, a member of the Ron Carey Slate, during the period from July 31, 1991, through August 2, 1991. His intentions in this regard were known to both the management of Consolidated Freightways as well as Mr. Jacobs. Because the Local did not take the necessary action to secure Mr. Serafinn's "float" as they had done in the past, Mr. Serafinn's prior accrued dispatches were nullified and Mr. Serafinn was forced to utilize vacation time to be able to participate in the previously planned campaign activity.

The Election Officer found that there was no bona fide basis for the refusal of Local 722 to secure a Union business leave for Mr. Serafinn's attendance at the July 16 meeting. I agree with the Election Officer's conclusion.

Mr. Serafinn had a legitimate reason for attending the meeting. When he had done so in the past, he had always received a Union business leave and secured his "float" on the work availability list.²

² At the hearing, Mr. Jacobs seemed to draw a distinction between Mr. Serafinn's attendance at a grievance meeting where he is representing himself and where Mr. Serafinn is representing a fellow Union member. Under these circumstances this is a distinction without a difference given that at the July 16 meeting, Mr. Serafinn represented himself in two grievances and a fellow
(continued...)

Given Local 722's sudden departure from its past practice, one cannot ignore the fact that Mr. Serafinn's political affiliations are opposed to those of the Local's President and Mr. Jacobs.

Against this background, it is clear that the action taken regarding Mr. Serafinn under these circumstances constituted political retaliation. 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"). The retaliation against Mr. Serafinn for his political affiliations as demonstrated by Local 722 here simply cannot be tolerated if these International officer elections are to be conducted fairly, honestly, and openly.

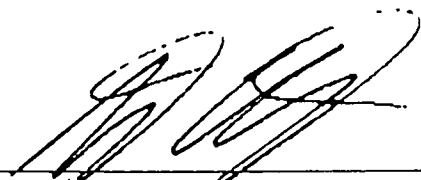
Accordingly, the Election Officer's remedy in this instance is proper. The Election Officer ordered the Local to make Mr.

²(...continued)

Union member in a third. Mr. Jacobs also seemed to suggest that past practice should not be followed here because Mr. Serafinn was attending a "state" grievance meeting. The significance of the fact that Mr. Serafinn was attending a "state" meeting is lost on me. Mr. Serafinn clearly stated at the hearing that he had attended "state" meetings in the past, had always obtained his Union leave and had always preserved his "float." This was supported by the Election Officer's independent investigation.

Serafinn whole for the losses he suffered by reason of the Local's action in obstructing Mr. Serafinn's Union business leave for his attendance at the July 16, 1991, meeting. As noted, Mr. Serafinn lost the opportunity for dispatches while he was awaiting rotation to the top of the list, and thus suffered an adverse impact on his wages. Mr. Serafinn also wrongfully incurred an interruption in the accrual of his 18 consecutive dispatches, which would have afforded him an 80-hour leave of absence. The Election Officer thus ordered the Local to compensate Mr. Serafinn for the loss of wages, subject to an accounting provided by the Local and Consolidated Freightways, and to secure for him a three-day Union business leave to compensate for the vacation time he was required to utilize for his campaign activity.

The Election Officer's decision is affirmed in all respects.



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

Dated: September 17, 1991