

OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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Election Officer

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October 8, 1991

VIA UPS OVERNIGHT

Diana Kilmury
2612 East 47th Avenue
Vancouver, B.C.
CANADA V5S 1C1

Fred Hunchuk
Secretary-Treasurer
IBT Local Union 155
490 East Broadway
Vancouver, B.C.
CANADA V5T 1X3

James J. Perensoff, Manager of Transportation
Stephen Sassen, V.P. and General Manager
Cannell Films of Canada Ltd.
555 Brooksbank Av.
North Vancouver, B.C.
CANADA V7J 3S5

Re: Election Office Case No. P-914-LU155-CAN

Gentlemen and Ms. Kilmury:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Diana Kilmury, a member of IBT Local Union 155 and a candidate for International Union Vice President At-Large on the Ron Carey slate. The protest alleges that Ms. Kilmury's employer, Cannell Films of Canada Ltd., violated her rights by unreasonably denying her request for a leave of absence so that she could campaign. The protest was investigated by Regional Coordinator Neil Reimer.

Ms. Kilmury works as a truck driver for movie production companies. When a production company needs employees, it calls the Local Union. The Local then dispatches the needed drivers from its hiring hall; the drivers are dispatched based on their seniority of the IBT members seeking such dispatch. There are approximately 326 members in Local Union 155. Of the approximately 178 members who obtain work through the Local's hiring hall, Ms. Kilmury is forty-first in seniority.

In the Spring of 1991, Cannell Films Ltd. of North Vancouver, British Columbia notified the Local Union that it was seeking employees to work on the television series, "Street Justice," which it was producing. Prior to accepting the dispatch, Ms. Kilmury talked to James Perensoff, Transportation Manager for the company. She informed Mr. Perensoff that she would not be able to work during specific periods of time due to her candidacy for International Union Vice President. ~~Mr. Perensoff that it would not be a problem, that the production company could always call the Local Union and obtain another employee through the Local's hiring hall.~~

Ms. Kilmury understood the discussion to mean that she would be permitted to obtain a leave of absence from her employment in order for her to engage in campaign activities. ~~Cannell Films interprets the discussion to mean that Ms. Kilmury was informing them that she would not remain with them for the duration of the production, but due to her campaign activities, she would leave the set before the television series had completed filming.~~ As Mr. Perensoff state, that was not a problem and ms. Kilmury was accepted for the position. Ms. Kilmury commenced her employment with Cannell Films on or about June 17, 1991. She was subsequently granted a one-week leave of absence which she utilized to attend the 1991 IBT International Union Convention. She returned to work after the Convention and continued working through September 4, 1991. The filming was recessed during the period of September 5 through September 15, 1991 and Ms. Kilmury - along with all other IBT members employed on the production - did not work. Ms. Kilmury had no further discussions with Cannell personnel about leaves of absence during this period of time.

During the period of the filming hiatus, Ms. Kilmury attended a Local Union meeting and spoke to the Secretary-Treasurer of Local 155 about her desire to take a leave of absence for campaigning purposes. The Secretary-Treasurer told her that she had to apply to the company and suggested she do so in writing.

On September 16, 1991, her first day back at work after the filming hiatus, Ms. Kilmury spoke to both her immediate supervisor and Mr. Perensoff about the leave. She wrote a letter so requesting a leave of absence and gave it to her immediate supervisor, Tom Milne, who delivered it to Mr. Perensoff. Mr. Milne told her she could leave after she had completed some equipment delivery. She and the other drivers completed the delivery and she left work at approximately 11:00 a.m. on September 16, 1991.

After she arrived back at home, she received a telephone call from Mr. Perensoff, who told her that Stephen Sassen, the Vice President and General Manager of Cannell Films, "had a problem" with her request for a leave of absence. Mr. Perensoff stated that Mr. Cannell would be responding to her request by a letter which he would send to her home facsimile machine. In his letter, Mr. Sassen stated that it was against company policy to grant leaves of absence for other than medical reasons. The letter indicated Cannell would treat Ms. Kilmury's request for a leave of absence as a resignation. Ms. Kilmury was subsequently informed that she was entitled to return to work if she so desired the following day. She chose not to do so, but rather to engage

in the campaign activities which were the purpose for which she had requested a leave of absence.

The collective bargaining agreement between Cannell Films and the IBT does not provide for leaves of absence for any purposes. While the company has granted leaves of absence in the past for medical and similar reasons, and indeed permitted Ms. Kilmury a week's leave of absence to attend the 1991 IBT International Union Convention, there is no evidence that the company has ever granted a leave of absence longer than about a week for other than medical reasons; there is no evidence that the company ever granted a leave of absence for as long as the leave requested by Ms. Kilmury - nearly three months. Cannell does not consider Ms. Kilmury's leaving employment as an adverse event. ~~Indeed, the company has assured Ms. Kilmury and the Election Officer that she would be entitled to the first available position at Cannell consistent with the seniority dispatch provisions - after she is available to return to work.~~¹

Cannell, Local Union 155 and Ms. Kilmury all agree that Cannell will have available positions for her when the 1991 IBT International Union election is completed. They also all agree that Ms. Kilmury's seniority will entitle her to be dispatched for the positions then available. ~~The positions that will then be available, however, while providing daily work at the same wage rate that Ms. Kilmury has enjoyed in her employment with Cannell, may entail far less overtime than the overtime she had been receiving.~~

The *Rules* clearly provide that all IBT members have the right to participate in campaign activities, including the right to run and actively campaign for International office. However, the *Rules* do not require that employers grant special privileges to IBT members employed by them to enable such members to participate in campaign activities or seek an International Union office. Even where a collective bargaining agreement provides for Union leaves - and this agreement does not - employers are not obligated to permit Union leaves to be taken and used for campaign purposes. See, e.g. *Rules*, Article, IX, § 1(c).

In this case, the collective bargaining agreement does not provide for leaves of absence for Union business or personal business. There is no evidence that Cannell has ever granted lengthy leaves to employees for personal business. There is no evidence that Cannell is treating Ms. Kilmury differently than it treats all other IBT members employed by it. The Election Officer investigation found no evidence that the Local Union participated or otherwise intervened in the employer's decision with respect to Ms. Kilmury. All parties agree that Ms. Kilmury will be rehired by Cannell - and

¹ A filming hiatus is scheduled from about mid-December, 1991 through mid-January, 1992. Given that Ms. Kilmury apparently seeks to campaign until the election is over, she will apparently be first available for work at Cannell after the Christmas filming hiatus.

Diana Kilmury
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dispatched for such position by Local Union 155 - when her campaigning activities have been completed.

For the foregoing reasons, 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, 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
C. Neil Reimer, Regional Coordinator

OCT 24 1991

X MHH
BJH
JS

IN RE:

DIANA KILMURY

and

CANNELL FILMS LTD.

and

IBT LOCAL UNION 155

91 - Elec. App. - 207 (SA)

DECISION OF THE
INDEPENDENT ADMINISTRATOR

This matter arises as an appeal of the Election Officer's decision in Case No. [REDACTED]. A hearing was held before me by way of teleconference at which the following persons were heard: John J. Sullivan and Barbara Hillman, on behalf of the Election Officer; Neil Reimer, an Adjunct Regional Coordinator; Diana Kilmury, the complainant; and Norm Wilkinson, President of IBT Local Union 155. The Election Officer also submitted a written Summary in accordance with Article XI, Section 1.a.(7) of Rules For The IBT International Union Delegate and Officer Election (the "Election Rules").

The complainant, Diana Kilmury, is a member of IBT Local Union 155 and a candidate for International Vice President At-Large on the Ron Carey Slate. She also works as a cable truck driver for Cannell Films, Ltd. of Canada ("Cannell"). Kilmury states she accepted employment with Cannell with the understanding that she would be allowed a leave of absence to conduct her campaign. When

Cannell refused to grant this leave, Kilmury filed a protest with the Election Officer.

Upon investigation, the Election Officer found that Cannell had previously granted Kilmury a one-week leave of absence to attend the June 1991 IBT Convention. However, while Cannell had a practice of granting leave of up to one week for personal business, it had no practice of granting leaves of absence for longer periods. To the contrary, the company had a policy of not granting such leaves except for medical reasons. In sum, the Election Officer found Cannell was not obligated to provide the leave of absence sought by Ms. Kilmury. In addition, the Election Officer found no evidence that Cannell was reacting to Kilmury's political activity or views.

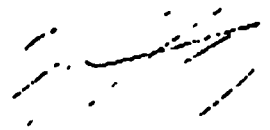
The significance of the leave of absence for Kilmury is that granting it would guarantee her the same job upon her return from her campaign. While Cannell advises that it would offer her work upon her return, it would treat Kilmury's leave as a resignation. As Kilmury noted at the hearing before me, it is likely that only day work on a casual basis would be available when she returned.

It is also possible, if you accept Kilmury's version of events, that Cannell's Transportation Manager may have inadvertently misled Kilmury about the availability of an extended leave of absence when she began work.

Kilmury's needs and expectations are not a basis for compelling Cannell to grant her request for a leave of absence.

The Election Rules guarantee the right of all IBT members to participate in the election process but they do not require employers to extend special privileges to IBT members or candidates for office. In fact, Cannell's unprecedented approval of a leave for one partisan candidate could itself be viewed as a campaign contribution made in violation of the Election Rules. Simply stated, since there was no discrimination or animus in Cannell's denial of Kilmury's request, there is no violation of the Election Rules.

For the foregoing reasons, the Election Officer's denial of Kilmury's protest is affirmed in all respects.



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

Dated: October 24, 1991