

November 20, 1996

VIA UPS OVERNIGHT

Ruth Ann Stodola
1933 Sheridan Street
Madison, WI 53704

David Shipley, Secretary-Treasurer
Teamsters Local Union 695
1314 N. Stoughton Road
Madison, WI 53714

Re: Election Office Case No. P-1176-LU695-NCE

Gentlepersons:

Ruth Ann Stodola, a member and business agent of Local Union 695, filed a pre-election protest pursuant to Article XIV, Section 2(b) of the *Rules for the 1995-1996 IBT International Union Delegate and Officer Election ("Rules")* alleging that Local Union 695 Secretary-Treasurer David Shipley has retaliated against her, in violation of the *Rules*, by creating "a hostile and threatening work environment where I experience unrelenting criticism for my support of Mr. Carey." Specifically, she alleges that Mr. Shipley ordered her to leave the local union's office on November 1, 1996, after accusing her of "destroying the local" and threatening, "I'll take care of you. I don't have long to live anyway. I'll take care of you."

Mr. Shipley responds that he sent Ms. Stodola home for insubordination and for trying to humiliate a 30-year steward of the local union. He further admits threatening to discharge her in the past, but states that such actions were based on her "vicious" relationships with the local union's staff, her eavesdropping at the local union office, and her pilfering of other employees' offices. He further responds to Ms. Stodola's charge of political motivation by contending that Ms. Stodola had not publicly admitted her support for Mr. Carey until she filed this protest.

This protest was investigated by Regional Coordinator Judith Kuhn.

"The Election Officer takes seriously any allegation of retaliation." Morales, P-947-LU70-CSF (September 27, 1996). As discussed below, the investigation in this matter revealed that both professional and personal relations between Mr. Shipley and Ms. Stodola have been

strained for years. Many of the allegations and responses involved in this protest relate to unwitnessed conversations between Mr. Shipley and Ms. Stodola, and their versions of those conversations substantially disagree. Accordingly, the Election Officer's investigator interviewed both individuals in-depth and sought direct and indirect corroboration from seven other persons.

The immediate events that culminated in Mr. Shipley's instructing Ms. Stodola to leave the local union office on November 1 began on October 28. Ms. Stodola represents the employees at Madison Metropolitan Transit ("Madison") in Madison, Wisconsin. Several issues had arisen about postings at the workplace, including the posting of Carey campaign literature on a glass-enclosed drivers' bulletin board. Several stewards objected to the posting, including steward Jim Delfosse, who works at Madison as a bus driver. In a conversation between Ms. Stodola and Mr. Delfosse, Ms. Stodola alleges that Mr. Delfosse threatened to pull the head off whoever had made the posting and to break the glass in order to remove the material from the board.¹ Mr. Delfosse denies making those statements but admits objecting to the Carey literature because he felt that it looked like an endorsement to have the material of only one candidate on the board.

The investigation revealed, and the Election Officer so finds, that Mr. Delfosse asked another steward, Geraldine Simmons, to remove the Carey material from the board and that Ms. Simmons did so. Ms. Simmons told Ms. Stodola about it, and they then discussed designating different boards for Carey and Hoffa material. Mr. Delfosse denies asking Ms. Simmons to remove the material but admits telling her that he found it objectionable.

After her conversation with Ms. Simmons, Ms. Stodola called Mr. Delfosse to suggest separate campaign boards, and they discussed it without resolution. They agreed to meet the following day, October 29. Ms. Stodola states that the meeting was to be at 2:00 p.m. Mr. Delfosse states that it was to be at 3:00 p.m.

At approximately 8:00 a.m. on October 29, Mr. Delfosse called the union hall to reschedule his meeting with Ms. Stodola to 4:00 p.m. Ms. Stodola was not there. Mr. Delfosse talked to Local Union 69 President Mike Spencer and asked him to be at the 4:00 meeting. There is no evidence on this record that Ms. Stodola was informed of the rescheduling, although she saw Mr. Spencer during the day, appeared at 2:00 p.m., and subsequently left a message on Mr. Delfosse's answering machine to say that she had to leave, which Mr. Delfosse admits receiving at approximately 3:30 p.m. When the investigator asked Mr. Shipley if Ms. Stodola had been informed of the rescheduling, he stated, "If I had to explain everything to my agents, I'd get nothing done. Do I have a duty to explain this to her under the Election Rules? I'm not

¹All stewards have keys to the bulletin board. Mr. Delfosse states that he had lost his key.

concerned whether or not she was offended by it. She may think she's in control of the local, but she's not."

Mr. Delfosse's meeting took place at 4:00 p.m. with Messrs. Shipley and Spencer, but not Ms. Stodola. With respect to the posting of Carey campaign material, several copies of which Mr. Delfosse had brought with him from a Madison bulletin board, Messrs. Shipley and Spencer state that they told Mr. Delfosse that the **Rules** permitted such material and that he should re-post it. While waiting for the meeting, Mr. Delfosse asked the officer manager, Barbara Becker, to compare one of the pieces of campaign material with the local union's office paper to see if the material had been improperly copied. During the meeting, Mr. Delfosse asked Messrs. Shipley and Spencer whether Ms. Stodola had been copying campaign literature on local union paper. She was not there to respond.

On October 30, Ms. Stodola alleges that Mr. Shipley greeted her in the morning by asking, "Why aren't you out campaigning for that piece of shit in Washington?" She further alleges that he told her, "If you vote for Carey on November 8, you are voting yourself out of a job"² and "You'll never get the smell off you." She states that he also accused her of reproducing a certain piece of campaign material on local union paper. She contends that she offered to get a copy of the flier in question, so that he could check the paper, and that he refused.

Mr. Shipley admits that he may have told Ms. Stodola to go ahead and campaign for Mr. Carey and "vot[e] yourself out of a job," although he states that he meant that Mr. Carey "is a stooge for the government who was hired to destroy the IBT," not that he was threatening Ms. Stodola with retaliation. He also admits telling her that she has destroyed herself, that she has wiped herself with skunk odor, and that she will never rid of it. He further admits stating that he could not understand how Ms. Stodola could vote for Mr. Carey, based on the last four years.

When Ms. Stodola arrived for work on November 1, Mr. Shipley asked whether she "wanted a letter" about cleaning her office, which was undisputedly messy. In a subsequent letter to Ms. Stodola following this protest, Mr. Shipley wrote that he directed her to clean her office in May, July, August, September, and October. Ms. Stodola generally denies that she received warnings but nevertheless responds that Mr. Shipley complains about her office whenever he has no other reason to complain about her.

Later that day, Mr. Delfosse came to the union office, in part to talk with Ms. Stodola about a member's grievance. There developed a meeting between Mr. Delfosse, Ms. Stodola, and Mr. Shipley. At one point, they argued about the rescheduling of the October 29 meeting. Ms. Stodola said that she should have been notified. Mr. Shipley took the position that Mr. Delfosse had the right to meet with Messrs. Shipley and Spencer without notice to her.

²The Election Officer had advised that ballots would be mailed on or about November 8, 1996.

At another point, Mr. Delfosse admits that he questioned whether Ms. Stodola used her union car for campaigning, which the Election Officer finds was based in part on his suspicion that Ms. Stodola had posted the Carey campaign material on the Madison bulletin board. It is undisputed that Ms. Stodola stated that such use is permitted. She alleges that Mr. Delfosse then said, "This union supports Hoffa and I expect you, as my business agent, to remain neutral." Mr. Delfosse denies the remark but admits stating that bulletin board postings for only one candidate give the impression that the local union supports that candidate. Ms. Stodola further alleges that Mr. Shipley repeatedly stated that Mr. Delfosse was right and that local union cars should not be used for campaign purposes. Mr. Shipley denies that allegation but states that he has prohibited business agents from using their union cars for campaigning, that he reminded Ms. Stodola that she is the only business agent who does so, and that he has not stopped her from doing so because she has no other car.

During the conversation over Ms. Stodola's use of her union car, Ms. Becker, entered the room. The undisputed aspects of the ensuing events are that Mr. Delfosse remarked that Ms. Stodola was driving him nuts, that Ms. Becker smiled, and that Ms. Stodola asked her what was funny. Mr. Shipley then asked Mr. Delfosse and Ms. Becker to leave the room.

At that point, Mr. Shipley criticized Ms. Stodola for attempting to humiliate a 30-year steward of the local union (Mr. Delfosse) and for turning the meeting into an "inquisition that developed into a hostile confrontation." Mr. Shipley characterized the earlier discussion about the rescheduling of the October 29 meeting as an attempt by Ms. Stodola to undermine his authority to meet with Mr. Delfosse. He further stated to the investigator that he should have fired Ms. Stodola on the spot for her "what's funny" remark.³ Mr. Shipley contends that Ms. Stodola "screamed" at him for not supporting her in the discussion with Mr. Delfosse, although Ms. Becker states that she heard no screaming except from Mr. Shipley, when he ordered Ms. Stodola to leave the office: "If you say another word, I'll fire you. Get out. I'll take care of you. I don't have long to live. I'll take care of you."

On Saturday, November 2, a tire on Ms. Stodola's car was slashed at the local union office. Ms. Stodola and Mr. Shipley differ strongly on the conversations they had about the incident and its consequences.

Ms. Stodola filed her protest, via facsimile, on Sunday, November 3. The Election Office logged the protest on November 4 and issued acknowledgment letters. Mr. Shipley received his letter on November 5. On that date, he talked to Ms. Stodola at the local union office. She states that he informed her as to how he was going to defend against her charge and reminded her that he can discharge her for philosophical reasons. Mr. Shipley later stated to the investigator,

³He further stated, "She jumped in my shit big time deep. What if one of your employees reached into your gut big time and twisted? It was disruptive and insubordinate and harassing and intimidating to me. She was in the attack mode."

I have not threatened to fire her for philosophical differences. That language may have occurred. I don't know. Ron Carey would not allow a Hoffa supporter anywhere near him. He would fire him in a second. There is a Seventh Circuit precedent involving this local union on firing people for exactly that reason. But I haven't done that. I may have cautioned her about her conduct and about the hostile and uncomfortable and intimidating environment she has created. The next time she hovers over people, she is intimidating and threatening, and she does it. I am not saying that I didn't have any conversations regarding philosophical differences. I may have mentioned it to her and reminded her of my right to do this. I don't recall the conversation and don't know what philosophical differences could have been involved. The Election Office has nothing to do with this. If you expect me to recall every conversation I've had with her, you're wrong. I can't do this.

On November 8 or 9, the investigator spoke again with Mr. Shipley about Ms. Stodola's protest. He stated,

Whatever she does now, she's going to pay. Ruth Ann [Stodola], now you've filed a charge, you're going to have to behave in a professional fashion. We don't have anything to hide. She does. I am going to start documenting everything she does. This is not my practice, because it is not productive, but when her conduct becomes intolerable, I'm going to nail her ass for that. I have a city ordinance to comply with to provide employees with a harassment-free work environment, and I'm entitled to a harassment-free work environment.

Since Ms. Stodola filed her protest, she alleges that Mr. Shipley changed her duties by giving the IBT's weekly "Update on Congress," which Ms. Stodola had regularly posted and distributed, to someone else. She also alleges that on November 13, Mr. Shipley objected to Ms. Stodola's wearing of Carey campaign paraphernalia on the grounds that "a member might see it," although he did not require her to remove it. Ms. Stodola states that another member had just walked into the office wearing Hoffa paraphernalia, and that Mr. Shipley himself often has a Hoffa slate card in his pocket. Later that day, Ms. Stodola and Mr. Shipley argued about a problem involving the local union and another union, at the end of which Ms. Stodola alleges that Mr. Shipley stated, "You want to take me on, smart girl? File a charge against me; file another charge."

On November 15, Ms. Stodola alleges that she expressed interest in organizing and archiving campaign material after the International officer election. She states that Mr. Shipley told her to check in the archives, when she was there, for the court decision involving the local union, on which Mr. Shipley bases his statements that he can terminate employees for philosophical reasons.

On November 8, Mr. Shipley issued a letter to Ms. Stodola citing her with “an act of gross insubordination” for not handling the incident of her slashed tire in the way that he alleges he instructed. On November 11, Mr. Shipley issued a letter to Ms. Stodola about cleaning her office, which concludes with,

It is quite obvious that you do not intend to comply with my directive and I consider that an act of gross insubordination. If I must assign a work detail from other staff employees to make your office space presentable, you can rest assured that I will request the Local Union Executive Board to support my demand for strong discipline.

Mr. Shipley generally denies taking issue with Ms. Stodola’s politics. He states that she has “vicious relationships” with other members of the local union staff, that she eavesdrops around the local union office, and that she “pilfers every employee office every night.” With respect to her work, he states,

All she has is one speed. It’s permanent attack. This is what makes her a good business agent. She’s a very good business agent. But when she does that to the principal officer, I send her home.

Other local union employees report that Ms. Stodola has for years been difficult to work with, abrupt, and demanding. One stated that “visible tension takes over the place when she walks in.” However, a witness who the Election Officer found to be unbiased and credible stated that he gets along well with Ms. Stodola. Some employees reported some incidents that they allege to be eavesdropping and some suspicion of entering offices when no one else is there. Ms. Stodola denies eavesdropping or pilfering.

Article VIII, Section 11(f) of the **Rules** prohibits any retaliation against anyone by the Union or its agents for exercising any right guaranteed by the **Rules**.⁴ To demonstrate retaliation, a protester must show that conduct protected by the **Rules** was a motivating factor in the adverse decision or conduct in dispute. The Election Officer will not find retaliation if she concludes that the union officer or entity would have taken the same action even in the absence of the protester’s protected conduct. Gilmartin, P-032-LU245-PNJ (January 5, 1996), aff’d, 95 - Elec. App. - 75 (KC) (February 6, 1996). See Leal, P-051- IBT-CSF (October 3, 1995), aff’d, 95 - Elec. App. - 30 (KC) (October 30, 1995); Wsol, P-095-IBT-CHI (September 20, 1995), aff’d, 95 - Elec. App. - 17 (KC) (October 10, 1995).

⁴Article VIII, Section 11(f) states:

Retaliation or threat of retaliation by the International Union, any subordinate body, any member of the IBT, any employer or other person or entity against a Union member, officer or employee for exercising any right guaranteed by this or any other Article of the **Rules** is prohibited.

In this matter, the Election Officer finds that Ms. Stodola and Mr. Shipley have had professional and personal conflicts that have gone on for years. Such issues are beyond the scope of the **Rules** and the remedial authority of the Election Officer.

On this record, however, the Election Officer finds that election-related issues were substantial motivating factors in recent retaliatory actions that Mr. Shipley has taken against Ms. Stodola. As reviewed above, Ms. Stodola has been subjected to increased scrutiny by Mr. Shipley and others for the following activities protected by the **Rules**:

- Suspicion of posting campaign material on a bulletin board at Madison. Such activity is protected as a “preexisting right” by Article VIII, Section 11(d). There is no evidence on this record that such a right does not exist at Madison. In exercising this right, it does not matter that material from one candidate or slate is posted, as long as the board is equally open for postings for other candidates or slates.
- Suspicion of using a union car for campaign purposes. Such activity is protected by Article VIII, Section 11(c), as long as union employees furnished with such vehicles are otherwise allowed to use them for personal activities and no costs from campaign activity flow to the local union. Mr. Shipley admits that personal use of local union vehicles is permitted. Therefore, if Ms. Stodola used her union car for campaigning, it was protected.
- Wearing campaign paraphernalia. The Election Officer’s *Advisory on Wearing of Campaign Buttons and Other Emblems* makes clear that local union employees may wear campaign paraphernalia while they work, unless the circumstances would suggest to a third party, such as an employer or the public, that the local union was endorsing a candidate. The wearing of paraphernalia while interacting with other members is protected.
- Filing a protest. Article XIV, Section 1 protects the right of members to file a protest “free from retaliation or threat of retaliation by any person or entity for such filing.” The Election Officer finds that Mr. Shipley has made threats against Ms. Stodola stemming from her filing, as well as issued her warning letters with respect to other incidents, which have a heightened level of criticism attributable to Ms. Stodola’s protest. The Election Officer further finds that Mr. Shipley has

modified Ms. Stodola's job responsibilities by reassigning certain work to someone else.

With respect to Mr. Shipley's statements that he has the power to terminate employees for philosophical differences, which constitutes a veiled threat to Ms. Stodola, the Election Officer made clear in Phelan, P-711-LU550-NYC (April 24, 1996), aff'd, 96 - Elec. App. - 184 (KC) (May 6, 1996), that termination may not include any motivation linked to the International officer election:

While substantive labor law generally permits labor union officials to remove appointees for political reasons, the **Rules** do not, if such action is based on a member's exercise of rights guaranteed under the **Rules**. See Wsol, P-095-IBT-CHI (September 20, 1995), aff'd, 95 - Elec. App. - 17 (KC) (October 10, 1995); Parisi, P-1095-LU294-PGH (December 2, 1991); Cremen, P-425-LU311-MID (March 11, 1991), aff'd, 91 - Elec. App. - 101 (SA) (March 19, 1991). As the Election Appeals Master stated on appeal in Wsol, "the Election Rules are broader than federal labor law, and prohibit any retaliation relating to the exercise of members' rights under the **Rules** . . .

The Election Officer finds that Mr. Shipley's veiled threats to terminate Ms. Stodola have been infected by motivation related to the International officer election. Therefore, those threats violated the **Rules**. Actual termination in this environment would also violate the **Rules**.

Thus, the Election Officer finds ample evidence on this record of prohibited retaliation by Mr. Shipley against Ms. Stodola. As stated at the beginning of this discussion, there is a long-standing, background level of conflict between Mr. Shipley and Ms. Stodola that is outside the scope of the **Rules**. However, retaliation is found when "conduct protected by the **Rules** was a motivating factor in the adverse decision or conduct in dispute." Gilmartin, supra. The Election Officer finds that protected conduct has exacerbated the ongoing conflict and has resulted in Ms. Stodola being ordered out of the office, work being shifted to another person, letters being written to "paper" potential adverse action, threats of termination being made, and an even more hostile environment being created at the workplace.

For the foregoing reasons, the protest is GRANTED.

When the Election Officer determines that the **Rules** have been violated, she "may take whatever remedial action is appropriate." Article XIV, Section 4. In fashioning the appropriate remedy, the Election Officer views the nature and seriousness of the violation, as well as its potential for interfering with the election process.

The Election Officer orders the following:

1. Mr. Shipley shall immediately cease and desist from retaliating against Ms. Stodola for engaging in, or being suspected of engaging in, activity protected under the **Rules**.

2. Mr. Shipley shall immediately restore Ms. Stodola to all duties that she performed as of October 28, 1996, and immediately withdraw all disciplinary-related notes, memoranda, or letters that he may have filed or sent with respect to Ms. Stodola since October 28, 1996.

3. Within two (2) days of the date of this decision, Mr. Shipley shall post the attached "Notice to Local Union 695 Members and Employees" on all bulletin boards in the Local Union 695 office. Within two (2) days of completing the posting, Mr. Shipley shall file and affidavit with the Election Officer demonstrating compliance with all aspects of the orders in this matter.

An order of the Election Officer, unless otherwise stayed, takes immediate effect against a party found to be in violation of the **Rules**. In Re: Lopez, 96 - Elec. App. - 73 (KC) (February 13, 1996).

Any interested party not satisfied with this determination may request a hearing before the Election Appeals Master within one day of 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:

Kenneth Conboy, Esq.
Latham & Watkins
885 Third Avenue, Suite 1000
New York, NY 10022
Fax (212) 751-4864

Copies of the request for hearing must be served on the parties listed above as well as upon the Election Officer, 400 N. Capitol Street, Suite 855, Washington, DC 20001, Facsimile (202) 624-3525. A copy of the protest must accompany the request for a hearing.

Sincerely,

Barbara Zack Quindel
Election Officer

cc: Kenneth Conboy, Election Appeals Master
Judith Kuhn, Regional Coordinator

**NOTICE TO LOCAL UNION 695 MEMBERS
AND EMPLOYEES**

The Election Officer has found that I have retaliated against Business Agent Ruth Ann Stodola, in violation of the *Election Rules*.

All local union employees have the right to engage in activity protected by the *Election Rules* without fear of retaliation or intimidation.

I will not retaliate against Ms. Stodola or any other local union employee for engaging in protected activity.

Date

David Shipley, Secretary-Treasurer
Local Union 695

*This is an official notice which must remain posted until December 10, 1996.
This notice must not be defaced or altered in any manner or be covered with any
other material.*

Approved by Barbara Zack Quindel, IBT Election Officer.