

April 30, 1996

VIA UPS OVERNIGHT

Richard Smith
8218 Augusta Way
Sacramento, CA 95828

David Lowman
7120 East Parkway
Sacramento, CA 95823

Re: Election Office Case No. P-600-LU150-CSF

Gentlemen:

Richard Smith, a member of Local Union 150, filed a protest pursuant to Article XIV, Section 2(b) of the *Rules for the 1995-1996 IBT International Union Delegate and Officer Election ("Rules")* against David Lowman, a business agent for Local Union 150. Mr. Smith is an employee of Montgomery Ward ("Ward's"). Mr. Smith campaigned in support of the slate which opposed the slate on which Mr. Lowman was a candidate in the Local Union 150 delegate election held on February 26, 1996.¹ Prior to the election, John Platt, another member of Local Union 150, filed P-448-LU150-CSF, a protest against Mr. Lowman and Marty Crandall, both Local Union 150 business agents assigned to represent Ward's employees. In the protest, Mr. Platt alleged that the two business agents failed to object when Ward's threatened to discharge Mr. Smith if he continued his campaign activities.²

¹Members of both slates won delegate and alternate delegate positions in the election. See Platt, Post 001-LU150-CSF et seq. (March 14, 1996), remanded, 96 - Elec. App. - 144 (KC) (March 29, 1996) decision on remand (April 24, 1996) (appeal pending). Mr. Lowman was not elected as a delegate.

²The Election Officer denied the protest in Platt, supra.

In this protest, Mr. Smith alleges that in an incident occurring after the delegate election, Mr. Lowman threatened him because of the complaint made about Mr. Lowman in the protest filed by Mr. Platt.

Mr. Lowman admits he had an altercation with Mr. Smith, but denies threatening or attempting to intimidate him. Mr. Lowman states that he was provoked by strong language used by Mr. Smith, whom he contends was the aggressor in their confrontation.

Regional Coordinator Matthew D. Ross investigated the protest.

The protested incident took place after the March 6, 1996 monthly membership meeting held by Local Union 150 at the Sacramento Central Labor Council building in Sacramento, California. At the meeting, Mr. Crandall gave a report. Mr. Smith then spoke and said that a Ward's supervisor had threatened him with termination in the presence of two Local Union 150 business agents. Mr. Crandall responded that he did not want to discuss this matter as it was pending at "another level."³ Local Union 150 President Terry Hogan expressed his frustration with "politics" and the meeting moved onto another topic.

Mr. Lowman states that he was upset about allegations of misconduct being made against him by Mr. Smith. After the meeting, he saw Mr. Smith talking to several other union members. Mr. Lowman approached the group and said to Mr. Smith, "I believe that there are a lot of liars in this world." Mr. Smith replied, "Are you talking to me?" Mr. Lowman responded, "No, but you know damn good and well that no one threatened you at Montgomery Ward." Mr. Smith told Mr. Lowman, "You are a lying son-of-a-bitch."

Mr. Lowman then stepped forward to stand within inches of Mr. Smith and said, "If you don't get out of my face, you'll be taken out of here in a body bag." Mr. Lowman turned to Elliott Darden and Jim Dyer, two other members standing nearby, and said, "Why don't you guys just get him the fuck out of here. Take this guy outside before I put him in a body bag."

³ This is an apparent reference to P-448-LU150-CSF, a protest filed with the Election Officer and consolidated into Platt, supra.

Jim Dyer said to Mr. Lowman, "I'm really worried about you, Dave." Mr. Lowman responded, "Why don't you just fuck off and die." Mr. Dyer repeated, "No, no, really Dave, I'm worried about you." Mr. Lowman replied, "Dyer, you need to worry about your fucking self. It was your lazy fat ass that collapsed behind the desk at the union office and it was that man over there," he said, gesturing to Local Union 150 Business Agent Cliff Webb, "that saved your life and dragged you to the doctor. Now you're trying to fuck him. If it would have been me, I would have let your fucking ass die, I would have pissed on your bald head, and had them drag you out in a fucking body bag."⁴ Shortly afterward, the group dispersed, including Mr. Smith. Mr. Lowman stayed behind and spoke with Mr. Crandall, after which Mr. Lowman left the facility.

The **Rules**, at Article VIII, Section 11(f), prohibit retaliation and the threat of retaliation by any person against a member for exercising any right guaranteed by the **Rules**. The right of IBT members to file, free from retaliation, election protests or to provide evidence in support of protests, even protests found to be non-meritorious, goes to the heart of the safeguards mandated by the **Rules** and the consent order. In Re: Sullivan, 95 - Elec. App. - 2 (KC) (July 14, 1995). The right to engage in political and campaign activities includes the right to be free from threats of violence. Lopez, P-456-LU743-CHI (April 10, 1996) (finding "I'll kill you" to violate the **Rules**, in light of ongoing animosity between the parties). Kelly, P-600-LU705-CHI, et seq. (March 27, 1991) (finding an aggressive threat to "kick their ass" made in a menacing manner to be harassment in violation of the **Rules**). A threat of physical violence for protected election activity, including filing of a protest, is chilling and cannot be tolerated.

The Election Officer finds that Mr. Lowman threatened Mr. Smith because a protest involving Mr. Smith had alleged misconduct by Mr. Lowman. Mr. Lowman is a Local Union 150 business agent and therefore, his threat is particularly serious because it was delivered by a person of authority to a local union member. Although Mr. Lowman took no action, his threat of violence in the context presented here violated the **Rules** and will not be tolerated.

Accordingly, 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

⁴Mr. Lowman was making a reference to the fact that Mr. Webb took Mr. Dyer, who is also a Local Union 150 business agent, to the hospital when Mr. Dyer had some problems at work due to his failure to take his heart medication. More recently, Mr. Dyer was a candidate for delegate on the slate which opposed the slate on which Mr. Webb was a candidate. Both Mr. Dyer and Mr. Webb were elected delegates.

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remedy, the Election Officer views the nature and seriousness of the violation, as well as its potential for interfering with the election process. A threat aiming to discourage assistance in filing a protest runs squarely contrary to the purpose of the **Rules** and the Consent Decree to create an open and free atmosphere for an uncoerced and fair election. In Re: Farkas, P-949-LU812-NYC (October 14, 1996), aff'd, 91 - Elec. App. 210 (October 24, 1996). To remedy the serious violation here, Mr. Lowman is directed to sign and post the following notice on all Local Union 150 bulletin boards for thirty (30) consecutive days.

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, 1966).

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, D.C. 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
Matthew D. Ross, Regional Coordinator

Notice to All Local Union 150 Members

The Election Officer has determined that I violated the *Election Rules* by interfering with the right of union members to file a protest concerning any violation of the *Rules*, and the right to campaign and engage in other political activity in the elections for delegate and International officer free from retaliation or threat of retaliation by any person or entity.

No one, including local union officers, business agents, delegate, stewards or employees, may threaten, coerce, harass or otherwise retaliate or take any other adverse action against you because you have filed a protest with the Election Officer, pursuant to the *Rules* for the IBT election, or because you support a candidate or slate.

Any attempt by a Local Union 150 officer, delegate, steward, employee or member to interfere or retaliate against you for filing a protest pursuant to the *Rules* of the Office of the Election Officer or for engaging in political activity in connection with the International officer election should be immediately reported to Barbara Zack Quindel, Election Officer, IBT, at her Washington, D.C. office. All such reports shall be immediately investigated and appropriate and remedial action taken.

DAVE LOWMAN
Business Agent
Teamsters Local Union 150

This is an official notice which must remain posted for 30 consecutive days and must not be defaced or altered in any manner or be covered with any other material.

Approved by Barbara Zack Quindel, IBT Election Officer.