

November 4, 1998

VIA FIRST CLASS MAIL

Dale Arthur
42 Ridgewood Drive
Alexandria, VA 41001

Sam Carter
Executive Assistant to Acting
General President Tom Sever
Int'l Brotherhood of Teamsters
25 Louisiana Avenue, NW
Washington, DC 20001

Tom Leedham Campaign Office
P.O. Box 15877
Washington, DC 20003

David A. Eckstein
35 E Street, NW, #110
Washington, DC 20001

Re: Election Office Case No. PR-281-IBT-EOH

Tom Sever, Acting General
President/Secretary-Treasurer
Int'l Brotherhood of Teamsters
25 Louisiana Avenue, NW
Washington, DC 20001

David L. Neigus
Acting General Counsel
Int'l Brotherhood of Teamsters
25 Louisiana Avenue, NW
Washington, DC 20001

Gentlemen:

Dale Arthur, a member of Local Union 100 and an IBT International Representative, 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")*** against Sam Carter, Executive Assistant to the Acting General President. Mr. Arthur alleges that Mr. Carter failed to assign him to a local union that requested Mr. Arthur's assistance. The protester alleges that this was in retaliation for his support of the Tom Leedham "Rank and File Power" Slate ("Leedham Slate"), in violation of the ***Rules***. Sam Carter denies the allegation.

The protest was investigated by Deputy Election Officer Benetta Mansfield and Election Office Staff Attorney Peter F. Gimbrière.

Mr. Arthur is assigned to Field Services as an International Representative. On June 24, 1998, Mr. Arthur notified Tom Sever, Acting General President of the IBT, that he was supporting the Leedham Slate.

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In a letter dated August 18, 1998, addressed to David Eckstein, Director of Field Services, Local Union 413 President David Carter requested the assistance of Mr. Arthur and Rob Halstead, Field Services representatives. David Carter mentioned two issues facing Local Union 413 that required the attention of the two representatives: (1) an ongoing full-time job campaign being waged against United Parcel Service ("UPS campaign") and (2) a servicing issue involving Tamarack Farms Dairy ("Tamarack Dairy").

David Carter had made similar requests in the past, all of which had been approved. While his previous requests were verbally made to Mr. Eckstein, Mr. Eckstein advised David Carter to make this August 18, 1998 request for Messrs. Arthur and Halstead in writing.

Mr. Arthur told the Election Office representatives that he had worked closely with Local Union 413 in the past. The vice-president of Local Union 413, William Smith, is a candidate for vice-president on the Leedham Slate. Mr. Smith had no involvement with the August 1998 request for the assistance as he is not involved with the UPS campaign or with Tamarack Dairy.

Regarding the specifics of the requested Local Union 413 assignment, David Carter stated that the UPS campaign involved a two to three day commitment of by the Field Services Representatives to determine whether Local Union 413 members were employed on a full-time basis by UPS and to set up rallies at four different UPS locations. The Tamarack Dairy assignment involved a one week commitment to set up and run rallies protesting a system of forced overtime. David Carter specifically requested the help of Messrs. Arthur and Halstead due to the fact that they had worked with Local Union 413 in the past and that they lived close by so would not have far to commute. David Carter never told Sam Carter the anticipated duration of the requested Field Service Representatives' assignments.

After receiving David Carter's August 18 letter, Mr. Eckstein approved the assignments and sent the request to Sam Carter for his final approval. Mr. Arthur stated that he had been sent home when Sam Carter canceled the Northwest Airlines Campaign¹. Therefore, at the time of David Carter's request, he was basically "sitting idle" and helping out Local Union 100, located in his hometown, while he awaited further instruction from the IBT in Washington, D.C. On September 1, 1998, Sam Carter denied David Carter's request. During a deposition of Sam Carter on September 10, 1998, he testified that "due to the problems of shortage[s of personnel] that we had previously discussed in field services and freight, I didn't think we needed to be assisting Local 413 until we took care of our needs." He further explained that the request for help on the UPS issue was untimely, due to the fact that the campaign addressing the alleged failure of UPS to live up to the agreement reached in the summer of 1997 had been canceled on July 31 by Acting General President Tom Sever.

With regards to Local Union 413's request for assistance on the "abuse of hours" issue, he testified as follows:

¹ See Eckstein, PR-197-IBT-SCE (October 23, 1998)(appeal pending).

[I]t's a log book type of thing with DOT. And this, here again, we needed - - I felt like we needed everybody we had in field service and these individuals are in field service . . . [Eckstein] wanted to move people . . . wanted to pull them off of what they were doing because of the shortage of help in field service.

When asked why he had granted a similar request for assistance made during the same time period from Local Union 28, Mr. Carter stressed that the request from Local Union 28 involved the short-term assignment of Butch Clark, an individual that is not an IBT Field Services representative:

The difference between this request is they [Local Union 413] want these people ongoing. This individual assigned to Local Union 28 isn't in field service and didn't work in field service. He's in Michigan somewhere. He can go down there and train this guy, get his speed as a project organizer that 28 was going to hire. And he just wanted somebody to get his feet on the ground; so he said he could do it in two weeks . . . But it's a lot of difference in two to four weeks as opposed to ongoing.

Sam Carter provided the Election Officer with a copy of a letter, dated July 31, 1998, which he received from Richard Nelson, IBT vice-president at-large and Director of the Freight Division. In the letter, Mr. Nelson requested immediate assistance in the Freight Division due to a shortage of personnel, stating that the situation had reached "emergency proportions."

Article VIII, Section 11(f) of the **Rules** prohibits retaliation against any member by the Union or its employees for exercising any right guaranteed by the **Rules**. To sustain a violation of this section, some evidence must be presented or disclosed which expressly or inferentially connects the conduct which is alleged to be improper to activity protected by the **Rules**. Giacumbo, P-100-IBT-PNJ (October 13, 1995); Salucci, P-178-LU552-MOI (October 31, 1995); Rogers, P-1346-IBT-NYC (March 4, 1997), aff'd, 97 - Elec. App. - 320 (KC) (March 17, 1997).

Article XIV, Section 1 of the **Rules** places the burden on the complainants "to present evidence that a violation has occurred." Furthermore, the Election Appeals Master has stated that the protester bears the initial burden of proof to offer evidence substantiating his allegation. In Re: Chentnik, 95 - Elec. App. - 52 (KC) (January 10, 1996). **Rules**, Article XIV, Section 1. The Election Officer has consistently denied protests when the protester offers insufficient evidence to corroborate and support his allegations. Hoffa, PR-043-LU385-SCE (January 9, 1998); Pike, P-278-LU952-CLA (January 30, 1996).

The Election Officer finds Sam Carter's reasons for not assigning Mr. Arthur to be within the discretion of the General President's office and not election-related. No evidence was presented showing that Sam Carter had any reason to believe that the Tamarack Dairy

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assignment was a short-term assignment. Moreover, there is no evidence connecting his reluctance to assign Field Service Representatives to Local Union 413 with any election-related motive.

Accordingly, the protest is DENIED.

Any interested party not satisfied with this determination may request a hearing before the Election Appeals Master within one (1) 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, 444 North Capitol Street, NW, Suite 445, Washington, DC 20001, Facsimile (202) 624-3525. A copy of the protest must accompany the request for a hearing.

Sincerely,

Michael G. Cherkasky
Election Officer

cc: Kenneth Conboy, Election Appeals Master