



OFFICE OF THE ELECTION OFFICER
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Michael H Holland
Election Officer

December 17, 1990

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343 South Dearborn Street
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VIA UPS OVERNIGHT

Daniel Kane
12026 Rose Hill Drive
Fontana, CA 92335

Carl Lindemann
Secretary-Treasurer
IBT Local Union 396
3435 Wilshire Blvd.
Suite 2420
Los Angeles, CA 90010

Re: Election Office Case No. P-067-LU396-CLA

Gentlemen:

A pre-election protest was timely filed under Article XI of the *Rules for the IBT International Union Delegate and Officer Election*. In his protest, ~~DAN KANE~~ alleges that he was terminated by United Parcel Service and removed as a shop steward by Local Union 396 because of his activity in support of the campaign of Ron Carey.

The investigation shows the following. Mr Kane has engaged in highly visible activity at his job site, both as a shop steward, organizing grievances and protesting working conditions, and as an activist for the Ron Carey campaign and the TDU. He has also engaged in protest activity within his local union. For example, he campaigned actively in opposition to the ratification in July, 1990 of the proposed contract between UPS and Local Union 396. Both this activity for Carey and TDU as well as his other work place issue organizing was known to both the Employer and the Union.

Sometime in October, Mr. Kane and another shop steward, Mr. Al Lozanno, solicited some thirty employees to sign a grievance protesting loss of time. Mr. Lozanno had also been somewhat active on behalf of Ron Carey, discussing the campaign with members and distributing literature from time to time. During the summer of 1990 the employer installed a metal detecting machine and required employees to

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pass through the machine, delaying their exit from work. The grievance sought back pay for lost time due to the inspection.

Prior to actual meeting with the Employer on the grievance, a large number of employees solicited for the grievance withdrew from the grievance, ~~complaining to the Business Agent of the Local Union that they had not completely understood what they were signing.~~ Nine persons including Kane continued the grievance. At an investigative hearing, held November 20, 1990, the UPS representatives challenged each grievant to prove their claim for lost pay. Apparently at least one of the grievants had been off work during most of the time relative to the grievance, and was owed no money. Other grievants were unable to demonstrate that they were owed back pay for all hours claimed in the grievance. ~~The following day, November 21, 1990, the Employer took a somewhat unusual action in response to the grievance, and discharged all of the grievants, including the shop stewards Mr. Kane and Mr. Lozanno, charging them with making a fraudulent claim for back pay against the company.~~

The Local Union immediately grieved the discharges and invoked arbitration for all the discharged members. At the same time the Secretary-Treasurer, Carl Lindemann, summarily removed both Mr. Kane and Mr. Lozanno as shop stewards. Apparently, some of the discharged members felt the grievance had been mishandled and held the stewards responsible for their discharge. Thus the Local Union decided to avoid this controversy pending arbitration of all discharge cases. Arbitration hearings were held on all discharges, including Mr. Kane's and Mr. Lozanno's, on December 12 and 13. ~~There is no evidence that any of the Union members other than the stewards who were discharged by UPS were active on behalf of Ron Carey.~~

The investigation showed no evidence independent of the discharge, of Employer hostility toward Mr. Kane for his activity on behalf of Ron Carey and the TDU.

The Election Officer concludes that, while the evidence demonstrates that Mr. Kane's campaign activity on behalf of the TDU as well as his campaigns on various work place issues were substantial, and well-known to UPS, there is insufficient evidence to show that Mr. Kane's campaign activity for Ron Carey, rather than his action taken with respect to the metal detector grievances, ~~was the motivating factor in the Employer decision to discharge.~~ The Election Officer notes that all grievants were discharged by the Employer, and that none of the other grievants with the exception of Lozanno had engaged in any Carey organizing efforts. The investigation shows that the Employer's

discharge of Kane was in response to his filing of a grievance rather than his Carey campaign activity. In most cases, Employer retaliation for the filing of a grievance is unlawful under the National Labor Relations Act, to be remedied by the National Labor Relations Board. cf. NLRB v. City Disposal Systems, Inc., 465 US 822, 115 LRRM 3193 (1984). ~~Discharge for grievance activity does not, however, present a cognizable claim under the Election Rules.~~ Accordingly, there is no violation of the *Rules*, and this aspect of the protest is denied.

The Election Officer concludes that Mr. Kane's activity on behalf of Ron Carey and TDU as well as his dissenting positions on intra-Union matters such as contract ratification disputes were well-known to Local Union 396. ~~There is, however, insufficient evidence that the Local Union discriminated against Mr. Kane because of his campaign activity on behalf of Ron Carey by removing him as shop steward.~~ Rather, the evidence shows that the Local Union removed both shop stewards involved in the grievance dispute, because of complaints about the way the grievance was handled from the other discharged employees. Furthermore, the Union grieved and arbitrated all discharges irrespective of whether the discharged members were or were not Carey activists. Additionally, there is no evidence, independent of his removal as shop steward, of Union animus toward Mr. Kane's campaign activity on behalf of Ron Carey.

For all of the foregoing reasons there is insufficient evidence to show a violation of the *Rules* by the Local Union when it removed Mr. Kane as shop steward. This aspect of 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.

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Very truly yours,



Michael H. Holland

MHH/mjv

cc Geraldine L Leshin, Regional Coordinator
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Susan Jennik, Esq
Association for Union Democracy
30 Third Avenue, Room 619
Brooklyn, NY 11217

Frederick B Lacey, Independent Administrator, IBT

IN RE:

DANIEL KANE

COMPLAINANT,

and

IBT LOCAL UNION 396,

RESPONDENT.

DECISION OF THE
INDEPENDENT
ADMINISTRATOR

This matter arises out of an appeal from a December 17, 1990, decision of the Election Officer in Case No. P-067-LU396-CLA. A hearing was held by way of teleconference before me on December 21, 1990, at which the following persons were heard: John Sullivan, on behalf of the Election Officer; Geraldine Leshin, the Regional Coordinator; Susan Jennik, the attorney for Daniel Kane; Carl Lindeman, the Secretary-Treasurer of IBT Local Union 396 ("the Local"); Dennis Harley, Esq., the attorney for the Local; and Daniel Kane, the Complainant.

This protest involved two separate challenges which are based upon a claim that a Local Union member was subjected to retaliation for his campaign related activity, in violation of Art. VIII, Section 10 of the Rules for the IBT International Union Delegate and Officer Election, issued August 1, 1990 ("Election Rules").

The protesting member, Daniel Kane, alleges that the termination of his employment by United Parcel Service ("UPS"), his employer, was violative of the Election Rules because it was done in retaliation for his campaign activities on behalf of Mr.

Ron Carey, an accredited candidate for the position of IBT General President. Mr. Kane also alleges that his removal as shop-steward of IBT Local Union 396 ("the Local") was based upon, and in retaliation for, the same campaign activities.

The decision of the Election Officer is annexed hereto as Exhibit A, and is incorporated herein by reference.

I find the following facts:

1. That since May 1990, and as of the time he filed his protest, Mr. Kane, a member of the Teamsters For a Democratic Union ("TDU") since May 1990, actively campaigned for Mr. Carey. Some of the Local's leadership, despite its denial that it was aware of any of Mr. Kane's campaigning for Mr. Carey, could not help but have been aware of such campaigning.
2. That certain UPS supervisory employees were aware of Mr. Kane's campaigning activities on behalf of Mr. Carey.
3. That as a shop steward, Mr. Kane played a significant role in the filing of nine separate grievances (including his own) with UPS, seeking back pay on the grounds that a company-installed metal detecting device, through which the Local's UPS employees had to pass before exiting work for the day, delayed the departure from work of the Local's members.
4. That all nine grievants were originally terminated by UPS for filing false claims for back pay in the aforesaid grievances. Included in those discharged were Mr. Kane and another steward, Mr. Al Lozanno.

5. That among those who had signed grievances were members who stated that Mr. Kane had misled them into signing their grievances and that they wished to withdraw their grievances. Two members who withdrew their grievances were subsequently reinstated by UPS.

The Election Officer determined that UPS had discharged Mr. Kane because of his filing a grievance seeking back pay for time spent by him and other employees in passing through the metal detector device and not because of his campaign activities. He noted UPS was aware of Mr. Kane's campaign activities since at least May or June of 1990 and the discharge did not take place until November 21, 1990, six or seven months thereafter, and on the day after the meeting between the Union and management over the grievance.

The Election Officer concluded in his December 17, 1990, decision that (Exhibit A, pp.2-3):

[W]hile the evidence demonstrates that Mr. Kane's campaign activity on behalf of the TDU as well as his campaigns on various work place issues were substantial, and well-known to UPS, there is insufficient evidence to show that Mr. Kane's campaign activity for Ron Carey, rather than his action taken with respect to the metal detector grievances, was the motivating factor in the Employer's decision to discharge. The Election Officer notes that all grievants were discharged by the Employer, and that none of the other grievants with the exception of Lozanno had engaged in any Carey organizing efforts. The investigation shows that the Employer's discharge of Kane was in response to his filing of a grievance rather than his Carey campaign activity. In most cases, Employer retaliation for the filing of a grievance is unlawful under the National Labor Relations

Act, to be remedied by the National Labor Relations Board. cf. NLRB v. City Disposal Systems, Inc., 465 US 822, 115 LRRM 3193 (1984). Discharge for grievance activity does not, however, present a cognizable claim under the Election Rules. Accordingly, there is no violation of the Rules, and this aspect of the protest is denied.

I agree with the Election Officer's determination that Mr. Kane was terminated by UPS for engaging in activities unrelated to the election process. Accordingly, I affirm the Election Officer's determination that Mr. Kane's termination by UPS was beyond his jurisdiction, and further, I find such conduct by the employer to be beyond the jurisdiction of the Independent Administrator.

Turning to Mr. Kane's removal as shop steward, Article VIII, §10 of the Election Rules permits all Union members to participate in campaign activities and to openly support or oppose any candidate for delegate, alternate delegate or international officer position. Retaliation by either the Union or the employer for a member engaging in such activities is violative of the Rules.

The Election Officer concluded that Mr. Kane was not removed as steward by the Local because of his campaign activities. There is ample evidence to support this determination. Thus, the Election Officer found the following facts (Exhibit A, p.2):

Prior to actual meeting with the Employer on the grievance, a large number of employees solicited for the grievance withdrew from the grievance, complaining to the Business Agent of the Local Union that they had not completely understood what they were signing. Nine persons including Kane continued the grievance. At an investigative hearing, held November 20, 1990, the UPS representatives

challenged each grievant to prove their claim for lost pay. Apparently at least one of the grievants had been off work during most of the time relative to the grievance, and was owed no money. Other grievants were unable to demonstrate that they were owed back pay for all hours claimed in the grievance. The following day, November 21, 1990, the Employer took a somewhat unusual action in response to the grievance, and discharged all of the grievants, including the shop stewards Mr. Kane and Mr. Lozanno, charging them with making a fraudulent claim for back pay against the company.

* * * *

The Local Union immediately grieved the discharges and invoked arbitration for all the discharged members. At the same time the Secretary-Treasurer, Carl Lindeman, summarily removed both Mr. Kane and Mr. Lozanno as shop stewards. Apparently, some of the discharged members felt the grievance had been mishandled and held the stewards responsible for their discharge. Thus the Local Union decided to avoid this controversy pending arbitration of all discharge cases. Arbitration hearings were held on all discharges, including Mr. Kane's and Mr. Lozanno's, on December 12 and 13. There is no evidence that any of the Union members other than the stewards who were discharged by UPS were active on behalf of Ron Carey.

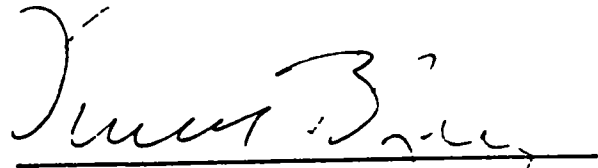
The Election Officer thereafter stated that (Exhibit A,

p.3):

The Election Officer concludes that Mr. Kane's activity on behalf of Ron Carey and TDU as well as his dissenting positions on intra-Union matters such as contract ratification disputes were well-known to Local Union 396. There is, however, insufficient evidence that the Local Union discriminated against Mr. Kane because of his campaign activity on behalf of Ron Carey by removing him as shop steward. Rather, the evidence shows that the Local Union removed both shop stewards involved in the grievance dispute, because of complaints about the way

the grievance was handled from the other discharged employees. Furthermore, the Union grieved and arbitrated all discharges irrespective of whether the discharged members were or were not Carey activists. Additionally, there is no evidence, independent of his removal as shop steward, of Union animus toward Mr. Kane's campaign activity on behalf of Ron Carey.

The evidence adduced at the hearing before me supported the findings made by the Election Officer. While there is no doubt that Mr. Kane did campaign for Mr. Carey, there is no evidence his removal as shop steward was based upon that activity. Accordingly, the decision of the Election Officer is affirmed in all respects.



Frederick B. Lacey
Independent Administrator

Date: December 27, 1990.