

OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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Washington, DC 20001

Michael H. Holland
Election Officer

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February 4, 1992

VIA UPS OVERNIGHT

Ken Hamm
7513 Orville
Kansas City, KS 66112

Dan Johnson
President
IBT Local Union 41
4501 Van Brunt Blvd.
Kansas City, MO 64130

United Parcel Service
Attn: Paul Korb
14650 Santa Fe Trail Dr.
Lenexa, KS 66215

Re: Election Office Case No. P-1012-LU41-MOI

Gentlemen:

A protest was filed pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Ken Hamm, a member of Local Union 41. Mr. Hamm contends that he was discharged by his employer, United Parcel Service ("UPS"), in retaliation for his political activities on behalf of Ron Carey and the Ron Carey Slate. The protest was investigated by Adjunct Regional Coordinator William O. Eisler.

Mr. Hamm was politically active on behalf of Mr. Carey and the Ron Carey Slate during the recently concluded 1991 IBT International Union officer election. He was a Union activist even prior to the 1991 IBT International Union officer election process commenced and was a steward at UPS. Managerial employees of the Lenexa East, Kansas UPS facility where Mr. Hamm was employed candidly admit that they were well aware of Mr. Hamm's political preferences in the 1991 IBT International Union officer election and further that they knew that he actively campaigned in support of his position at UPS.¹

¹ UPS was also aware of Mr. Hamm's political position from the prior protest he filed against it claiming that he was disciplined, received an unfavorable performance review, in retaliation for his support for Mr. Carey and the Ron Carey Slate. See Election Office Case No. P-846-LU41-MOI.

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Accordingly, there is no dispute that Mr. Hamm was an active supporter on behalf of Mr. Carey and his slate and that UPS was aware of his support and activities. Mr. Hamm does concede, however, that no UPS managerial or supervisory employee said anything to him about the election or his activities on behalf of one of the contenders for the position of IBT General President. In this regard, however, see Election Office Case No. P-846-LU41-MOI where Mr. Hamm contended he received "disapproving looks" from supervisory employees on August 1, 1991 when he engaged in campaign activities on behalf of Mr. Carey.

Mr. Hamm was discharged from employment on October 22, 1991 for poor job performance. Since it is admitted and undisputed that UPS was aware of his campaign activities prior to that date, the issue that the Election Officer must determine was whether the discharge emanated from such political activity, that is, whether "but for" Mr. Hamm's political activity, he would not have been discharged.²

As noted above, there is no direct evidence demonstrating animus on the part of UPS based upon Mr. Hamm's political activities. Mr. Hamm suggests, however, that his discharge was "strategic;" by discharging him, UPS limited his ability to engage in campaign activities at and among the IBT members at the Lenexa East, Kansas facility. UPS also eliminated the favorable publicity for Mr. Carey provided by the large fluorescent green Ron Carey sign which he placed in the windshield of the vehicle he drove to work and which remained in the windshield during the entire period the vehicle was parked in the UPS employee parking lot. Mr. Hamm was not discharged, however, until October 22, 1991 toward the end of the 1991 IBT International Union officer election campaign.

Further, Mr. Hamm's discharge on October 22, 1991 was not the first discipline he has received from UPS for poor job performance. He has received numerous poor performance evaluations and has been removed from work because of his performance. Indeed, he was discharged on that basis in March, 1991. While he was subsequently reinstated pursuant to the grievance procedure of the IBT/UPS collective bargaining agreement, the reinstatement was based upon the severity of the penalty imposed by UPS, not on a finding that he had performed his job properly. See also Election Office Case No. P-846-LU41-MOI wherein the Election Officer found that UPS did not engage in retaliation against Mr. Hamm on the basis of his political activities when it issued him

² The Election Officer is not deciding whether Mr. Hamm's discharge was for cause in conformity with the collective bargaining agreement between the IBT and UPS. That issue will be decided through resolution of Mr. Hamm's presently pending discharge grievance. The Election Officer has no jurisdiction with respect to that issue and makes no determination regarding the existence of proper cause on the part of UPS to discharge Mr. Hamm.

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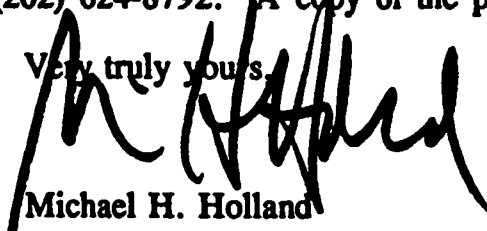
a notice indicating that he was not performing his job properly.

Mr. Hamm admits that he has been "the least best" driver employed at the UPS Lenexa East, Kansas facility for quite some period of time.³ For a lengthy period prior to his discharge, Mr. Hamm's work performance records indicate that his work hours deviated from the company-set standard more than any other driver employed at the Lenexa East terminal. See also Election Office Case No. P-846-LU41-MOI.

For all the reasons enumerated above, there is insufficient evidence to sustain the conclusion that Mr. Hamm's discharge was motivated by animus on the part of UPS against him based upon his election-related activities. Accordingly, 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

Michael D. Gordon, Regional Coordinator (For Information Only)

William O. Eisler, Adjunct Regional Coordinator

³ Shortly before his discharge, approximately 12 drivers who had previously been assigned to a different UPS facility were transferred to Lenexa East. Mr. Hamm claims that four or five of such drivers were worse performers than he.

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