

OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
25 Louisiana Avenue, NW
Washington, DC 20001

Michael H. Holland
Election Officer

(202) 624-8778
1-800-828-6496
Fax (202) 624-8792

November 26, 1991

VIA UPS OVERNIGHT

Helen M. O'Hara
2046 Seventeenth Avenue
San Francisco, CA 94116

Ben Leal
Secretary-Treasurer
IBT Local Union 856
185 Berry Street
Suite 3510
San Francisco, CA 94107-1729

Re: Election Office Case No. P-1105-LU856-CSF

Dear Ms. O'Hara and Mr. Leal:

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"). In her protest, Ms. Helen M. O'Hara alleges that her rights under the *Rules* were violated by Local Union 856, by its refusal to accept her monthly dues, thereby denying her the right to vote in the 1991 election for IBT International Union officers. The protest was investigated by Regional Coordinator Donald Twohey.

Ms. O'Hara was discharged from her employment with the Union employment in April 1991. During her period of employment with Local 856, she paid monthly dues to Local 856 and was a member in good standing of Local 856. Subsequent to her discharge, she filed a worker's compensation disability claim against the Local; the claim was approved and she is presently receiving disability benefits. She protested her discharge by filing an unfair labor practice charge before the National Labor Relations Board ("NLRB"), which still is pending.

Since her discharge, Ms. O'Hara has attempted to pay her Union dues. Her May dues were rejected and dues checks for subsequent months submitted by her to the Local remain uncashed. Here dues record accordingly reflects that she is neither an active member nor in good standing. Finally, she has been issued a withdrawal card, over her objections.

Article VIII, § 6(a) of the IBT Constitution provides that an "honorable withdrawal card must be issued six (6) months after the month in which the member first becomes unemployed." It is unclear from the facts of this case whether six months have actually elapsed. However, the Election Officer has previously held that a complainant's active pursuit of a grievance over his discharge or dismissal from employment tolls the six-month period for the purpose of the issuance of an involuntary

Helen M. O'Hara
November 26, 1991
Page 2


withdrawal card. See Election Office Case No. P-020-LU283-MGN, affirmed on appeal, In Re: Stone, 91-Elec. App.-38 (February 1, 1991). These decisions are premised on substantive federal labor law holding that a dischargee's active pursuit of a cause of action concerning his discharge is sufficient to maintain continuous and active employment status for the purpose of retaining union membership. Brennan v. Lift Truck Builders, 490 F. 2d 213 (7th Cir., 1974); Brock v. UTU, 126 LRRM 3340 (N.D. Ind., 1987).

Since Ms. O'Hara is actively contesting her discharge before the NLRB, she remains entitled to retain her membership in Local 856 and the Local is precluded from issuing her an involuntary withdrawal card. The Union should, in fact, have accepted her dues and continue to accept her dues and maintain her as an active member in good standing with Local 856 and the IBT.

However, the Election Officer cannot reach the merits of Ms. O'Hara's claim, as her protest is untimely. Article XI, § 1(a)(1) of the *Rules* provides that protests such as Ms. O'Hara's "must be filed within forty-eight (48) hours" of the offending conduct or said protest "shall be waived." The Independent Administrator, reversing the Election Officer, has previously held a protest untimely, when not filed within 48 hours in the factually similar case of In Re: Oxner and Owens, 91-Elec. App.-98 (March 15, 1991). Ms. O'Hara's good standing status as a member of Local 856 was terminated when the Local refused to accept her dues and thereafter her withdrawal card. Ms. O'Hara first knew the Local was refusing to accept her dues in May, 1991; she thus should have filed her protest within 48 hours thereafter. As she failed to do so, and filed no protest until November, 1991, the Election Officer cannot rule on the merits of her claim.

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

Helen M. O'Hara
November 26, 1991
Page 3

MHH/mjv

cc: Frederick B. Lacey, Independent Administrator

Donald Twohey, Regional Coordinator