

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

Michael H. Holland
Election Officer

(202) 624-8778
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January 15, 1992

VIA UPS OVERNIGHT

Wayne Moffitt
53 East Street
Georgetown, MA 01833-2509

William Dodd, President
Pat Geary, Trustee
Al Janiak
c/o IBT Local Union 82
330 Dorchester Street
South Boston, MA 02127

John J. Perry
Secretary-Treasurer
IBT Local Union 82
330 Dorchester Street
South Boston, MA 02127

Re: Election Office Case No. P-1115-LU82-ENG

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Wayne Moffitt, a member of IBT Local Union 82. In his protest Mr. Moffitt alleges that he was threatened and discriminated against by members and officials of Local Union 82 because of his support and activity on behalf of International Union officer candidates on the Ron Carey Slate. This protest was investigated by Election Office Regional Coordinator Elizabeth A. Rodgers.

Since July of 1990, Moffitt has been employed first by Champion Decorating and subsequently by Freeman Decorating in setting up trade shows in the Boston, Massachusetts area. Mr. Moffitt is not on a seniority list of Freeman employees but rather works as a casual employee.¹ Casual employees are referred to Freeman by the

¹ The employer maintains a three-tiered wage scale for its employees. The highest tier is the regular employees who are on the seniority list. These employees receive \$16.25 per hour and double that rate for overtime. Casual or spare employees, who have worked over 360 hours receive \$16.25 per hour and time and a half for overtime. Spare employees who have worked less than 360 hours earn a base rate of pay of \$12.86 an hour.

Union if the employer requires more employees than are on its regular employee seniority list. Casual employees are required to call into the Union on days that they are available to work. They are not guaranteed work on days they are available; they are hired only when and if they are needed by the employer. Casual employees do not have "seniority" and the fact that they may have greater tenure with the employer or in the industry does not determine whether they will have work on a particular day. Once the casual employee informs the Union that he is available for work, the Union confirms that he is in good standing and transmits the list of available workers to the employer. The member then calls the employer for an assignment.

While some casual employees are given definite assignments by Freeman for certain shows, the employer also informs employees that there may be additional work available and thus the employee may appear in person at the job site for assignment. Casual employees who appear at the work site without a definite assignment are said to "speculate" on receiving work on that particular day. Several employees have informed the Election Officer that Local Union 82 officials, such as William Dodd, President of the Local Union and a shop steward at Freeman, and John Perry, the Secretary-Treasurer of Local Union 82, select the employees who will be put to work from the pool of "speculating" casuals. The Local Union denies that it has any role in selecting casual employees who will be given work.

In August, 1991, Mr. Moffitt was at Bayside Mall seeking work ("speculating" for) installing the MacWorld computer show. There were approximately 100 other casual employees present seeking work. Prior to the start of work, William Dodd, President of the Local Union and a shop steward for Freeman, circulated through the group of casuals passing out Frank Hackett campaign ribbons. Dodd asked Moffitt to wear a Hackett ribbon because Hackett was going to make a campaign appearance at the work site that morning. When Moffitt refused Dodd stated "you must be for the other guy." Moffitt alleges that he was the only member not to wear a Hackett ribbon that morning and the only member who did not get work.²

On November 12, 1991, Moffitt was working on the installation of the Auto Show in Boston. He was working along side Pat Geary, a Local Union trustee. Geary pointed to a Ron Carey button that Moffitt was wearing and stated, "you better not wear that button here." Other IBT members wore buttons supporting other candidates on that job and Moffitt asked Geary why he had to remove his. Geary stated that "things can

² Since this incident occurred well before the 48-hour time limit for filing protests under Article IX of the *Rules*, the Election Officer did not consider these allegations as a separate claim in this protest. Rather the Election Officer relied upon this incident only to establish the fact that Moffitt did not support the candidates who were supported by the officers of his Local Union and that this fact was known to those officers.

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happen." Moffitt replied, "What, are you going to break my legs?" Geary did not respond.

In an interview with the Regional Coordinator during the investigation of this protest Geary denied that he threatened Moffitt. Geary claims that Moffitt was not wearing a button and that the exchange was about his (Geary's) R. V. Durham slate button. Given the other evidence uncovered in the investigation it appears unlikely that Moffitt would have challenged a Durham supporter, particularly one who was a Local Union officer. The evidence also supports the conclusion that Moffitt would have been wearing his Carey button at work.³ Therefore, the Election Officer credits Moffitt's description of the conversation with Geary on November 12, 1991.

On November 21, 1991 Moffitt drove his car, a vintage Mercedes-Benz with a Ron Carey bumper sticker on it, to the Freeman office to pick up his paycheck. In the parking lot he was confronted by Al Janiak, a member of Local Union 82, who said that Moffitt had a lot of nerve driving that car with a Carey sticker on it. Janiak also said that Moffitt would never get work at Freeman again because of the Carey bumper sticker. Janiak works at Freeman where he sells Local Union 82 jackets to IBT members employed by Freeman. Janiak is not an officer or employee of Local Union 82. Janiak has informed casual employees that they are not likely to get work if they do not show their support for the Local Union by buying and wearing the jackets.⁴

Moffitt has not worked at Freeman since his November 21, 1991 encounter with Janiak. However, the Election Officer's investigation found that no other casual employee worked at Freeman since the end of November 1991. While the employer anticipates work in January, as of this date it has not employed any casual employees. The Election Officer was therefore unable to conclude that Moffitt suffered any discrimination because of his support for Ron Carey.

While it appears that Moffitt has not suffered any loss of employment as a result of his support of Ron Carey, he has been the subject of threats by officers and members of Local Union 82. Mr. Geary is a Trustee of the Local Union. His comment to Moffitt that "things can happen" because he was wearing a Carey button is a clear threat.

³ Moffitt also discussed the conversation with other Carey supporters, who were not witnesses, soon after the event. Moffitt's description of the conversation to those individuals is consistent with the description given to the Election Officer.

⁴ Moffitt also alleges that his Mercedes was vandalized, i.e., the distinctive Mercedes-Benz medallion was removed from the grill, because of his support for Ron Carey. The Election Officer found no evidence from which he could conclude that the act of vandalism was related to or in reprisal for Mr. Moffitt's campaign activity.

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This is particularly true given the sporadic nature of Moffitt's employment as a casual and the Union's apparent influence or control over the selection process. Moreover, the fact that Geary did not respond to Moffitt's suggestion that Geary's comment meant that Moffitt's "legs were going to be broken" may be said to add to the perception of Geary's comment as a threat.

Janiak's comment was also a threat. Janiak explicitly linked Moffitt's continued referral and selection for employment at Freeman to his display of the Ron Carey bumper sticker. While Janiak is not an officer of the Local Union he does sell Local Union jackets at the work place. His statements to prospective purchasers of the jackets, i.e., that if they purchased and wore the jackets they would have a better chance of getting work, makes it appear that Janiak has some participation in the referral and hiring process. This fact gives at least the perception of credibility to his threat.

For the foregoing reasons, the instant protest is GRANTED. The Election Officer hereby orders the following relief to remedy these violations of the *Rules*.

Pat Geary and Al Janiak shall cease and desist from threatening Wayne Moffitt or any other IBT member because of their support or activity on behalf of any candidate for International Office in the IBT.

The attached memorandum is to be posted by Local Union 82 on all bulletin boards at the Local's offices and on all Local Union bulletin boards at all facilities where Local Union 82 members employed by Freeman work and is to be read by the Presiding Officer at the next Local Union 82 membership meeting. See Election Office Case Nos. P-1125-LU295-NYC; P-800-LU135-SCE; P-352-LU7694-SEC, affirmed, 91-Elec. App.-76. The Secretary-Treasurer of Local Union 82 shall submit an affidavit within ten (10) days of the date of this decision demonstrating that the posting has been accomplished and noting the date of the next Local Union 82 membership meeting. The officer presiding at the next scheduled Local Union membership meeting shall submit an affidavit within three (3) days of the date of such meeting demonstrating that the attached memorandum was read to the membership at the meeting.

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,

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D.C. 20001, Facsimile (202) 624-8792. A copy of the protest must accompany the request for a hearing.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael H. Holland". The signature is written in a cursive style with a large, prominent initial "M".

Michael H. Holland

cc: Frederick B. Lacey, Independent Administrator
Elizabeth A. Rodgers, Regional Coordinator

January 15, 1992

M E M O R A N D U M

To: All Members of IBT Local Union 82
From: Michael H. Holland, Election Officer
Re: Protected Activities

Local Union 82 has posted and is reading this memorandum at the Local's membership meeting to clarify and emphasize that all members of the IBT are entitled to participate freely and fully in all International Union officer elections without harassment, intimidation, fear of or personal harm or fear of or loss of employment. During the recent International Union Officer election campaign threats of personal harm and loss of employment were made to a member of Local Union 82 because of his support of a particular slate of International Officer candidates. Such action is totally inappropriate and will not be tolerated or permitted by Local Union 82 or by the IBT. Such activity and all like or related activities, including any type of threat or coercion against any IBT member, will be prosecuted to the fullest extent possible, both internally within the Union, by referral to Charles Carberry, the Court-appointed Investigation Officer, and by outside law-enforcement authorities.

This is an official notice which must remain posted for a period of not less than 45 days from the initial date of posting. This notice must not be defaced or altered in any manner and must not be covered over with any other material.

IN RE:

WAYNE MOFFITT

and

WILLIAM DODD, PAT GEARY
AL JANIAC

and

IBT LOCAL UNION NO. 82

92 - Elec. App. - 249 (SA)

DECISION OF THE
INDEPENDENT ADMINISTRATOR

This matter arises as an appeal from the Election Officer's decision in Case No. P-1115-LU82-ENG. A hearing was held before me by way of teleconference at which the following persons were heard: John Sullivan and Barbara Hillman for the Election Officer; Elizabeth Rodgers, a Regional Coordinator; Wayne Moffitt, the complainant; John J. Perry, the Secretary-Treasurer of IBT Local 82; William Dodd, President of Local 82; Pat Geary, a Trustee of Local 82; and Colum Flaherty, an IBT member representing Mr. Moffitt. In addition, the Election Officer submitted a written Summary in accordance with Article XI, Section 1.a.(7) of Rules for The IBT International Union Delegate and Officer Election ("Election Rules").

In this protest Mr. Moffitt has alleged that Mr. Geary and Al Janiak, a Local 82 member, threatened him with physical violence and economic reprisals because he supported Ron Carey in the recent IBT International Union officer election.

Mr. Moffitt works for Freeman Decorating ("Freeman"), a company that sets up trade shows in the Boston, Massachusetts area.

He is a "casual" employee who is hired for projects with excess work that cannot be handled by the regular employees. To obtain work with Freeman, Mr. Moffitt must call into Local 82 on the days when he is available for work. Local 82 then confirms Mr. Moffitt's good standing and includes his name on a list of available workers which is sent to Freeman. Mr. Mofitt then calls Freeman to find out if there is a specific assignment for him. In addition, Mr. Moffitt may appear in person at the job site, even without a specific assignment, to "speculate" for extra work.

The Election Officer found that Local 82 officials could influence Freeman in its selection of casual employees who were speculating for work. The Election Officer also found that Mr. Geary had obtained work with Freeman by speculating when he had no specific assignment, and when his name was not on the good standing list furnished by the Local.

In August 1991, Mr. Dodd approached Mr. Moffitt, who was speculating for work along with a group of other casual employees at a Freeman worksite, and asked him to wear a ribbon signifying support for Frank Hackett. At the time Mr. Hackett was a candidate for International Vice President on the R.V. Durham Unity Team Slate. When Mr. Moffitt refused to accept a Hackett ribbon, Mr. Dodd stated, "you must be for the other guy." At the hearing before me, Mr. Moffitt was unable to recall with any certainty whether he was able to obtain work that day. The Local alleges, however, that according to its records Mr. Moffitt did, in fact, work on that day.

Since the August 1991 incident occurred outside the time limits established for filing protests under the Election Rules, Article XI, Section 1.a.(c), the Election Officer made no independent finding whether this incident constituted a violation of the Election Rules. The Election Officer simply viewed the incident as evidence that at least some Local 82 Officers were aware of Mr. Moffitt's support for Ron Carey. Given that Mr. Dodd acknowledged that he had the exchange with Mr. Moffitt in August 1991, the Election Officer's conclusion in this regard is supported in the record. It does not matter whether Mr. Moffitt worked on the day in question. What is significant is that the Local Union President commented disparagingly on Mr. Moffitt's support for Carey.

In November 1991, Mr. Moffitt was working at another Freeman worksite in Boston. Mr. Moffitt alleges that at that time Mr. Geary noticed him wearing a Ron Carey button and warned him, "you better not wear that button here." When Mr. Moffitt asked Mr. Geary why he should remove the Ron Carey button, Mr. Geary replied, "things can happen." Mr. Moffitt then asked, "what, are you going to break my leg?" Mr. Geary gave no response and remained silent. Mr. Geary denies that the incident occurred as Mr. Moffitt alleges. Mr. Geary's version has Mr. Moffitt approaching him and making some comments about a R.V. Durham button he was wearing.

In resolving the conflicting stories, the Election Officer credited Mr. Moffitt's version of events. The Election Officer found it implausible that Mr. Moffitt, a casual employee, would have

challenged a Local Union Trustee for wearing an R.V. Durham campaign button. The Election Officer also relied on the fact that Moffitt related a consistent version of the incident to Mr. Flaherty shortly after the event. At the hearing, Mr. Flaherty stated that when Mr. Moffitt told him about the incident, he appeared genuinely frightened. The Election Officer also noted that Mr. Moffitt frequently wore a Ron Carey campaign button.

As the only neutral fact finder in the process, the Election Officer's findings are entitled to some deference. Here, the Election Officer's crediting of Mr. Moffitt's version is supported by a well-reasoned evaluation of the facts. Nothing presented at the hearing before me requires that the Election Officer's conclusion be rejected.

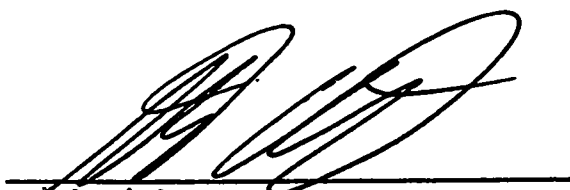
Shortly after the incident in Boston, Mr. Moffitt drove to the Freeman office in a car displaying a Ron Carey bumper sticker. Mr. Moffitt alleges that Mr. Janiak approached him at the Freeman office and told him that he would never get work at Freeman again with that type of bumper sticker. Mr. Janiak is perceived by other members of the Local to be friendly with the Local Union Officers. The Election Officer's finding that Mr. Janiak impermissibly threatened Mr. Moffitt on this occasion was not disputed at the hearing before me.

As a remedy, the Election Officer directed Mr. Geary and Mr. Janiak to cease and desist from making further threats against Mr. Moffitt. As a further remedy, the Election Officer directed Local 82 to post, and to read at one of its meetings, a remedial notice

from the Election Officer affirming the rights of IBT members to engage in political activities without fear of retaliation. The Local challenges the Election Officer's decision.

There can be no rational or legitimate objection to this remedy. The notice does not identify either the victim or the wrongdoers in this protest. Nor does the notice suggest that Local 82 is guilty of any wrongdoing. Instead, the notice states generally that chilling comments were made and that neither Local 82 nor the Court-appointed Officers will tolerate threats of retaliation against IBT members who choose to exercise their political rights under the Election Rules. Even if certain officers of the Local dispute some of the Election Officer's factual findings, "it would seem that the Local would embrace an opportunity to support a notice by the Election Officer which merely guarantees the rights of the Local's membership." In Re: Lozanski, 91 - Elec. App. - 97 (SA) (March 15, 1992).

Based on the foregoing, the decision of the Election Officer is affirmed in all respects.



Frederick B. Lacey
Independent Administrator
By: Stuart Alderoty, Designee

Dated: January 31, 1992