

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

June 6, 1991

VIA UPS OVERNIGHT

Steve Kindred
500 State Street
Brooklyn, NY 11217

Dennis Silverman
President
IBT Local 810
10 East 15th St.
New York, NY 10003

Louis Smith
c/o IBT Local 810
10 East 15th St.
New York, NY 10003

Anthony Veltry
c/o NYU Medical Center
550 First Ave.
New York, NY 10016

Re: Election Office Case No. P-757-LU810-NYC

Gentlemen:

A protest was filed in accordance with Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*"). The protest was filed on behalf of Anthony Veltry by Stephen Kindred. In his protest, Anthony Veltry alleges that Lou Smith, a business agent of Local 810, refused to process his grievance concerning NYU supervisors performing bargaining unit work, in retaliation for Mr. Veltry's participation in Local 810's recent delegate election. Amy Gladstein, the Election Office Regional Coordinator, conducted an investigation into Mr. Veltry's allegations. The investigation disclosed the following facts.

Local 810's election for delegates and alternates was ultimately uncontested. Initially two slates were nominated. One slate headed by the incumbent Union President, consisted of nine delegate candidates and the three alternate candidates. A second partial slate, the Teamsters Rank and File Slate, was also nominated. Mr. Veltry was a member of this second slate, but was declared ineligible to run, along with all the other members on his slate, pursuant to the Election Officer's decision in E-135-LU810-NYC, affirmed 91-Elec.App.-69. Prior to the Election Officer's decision declaring him ineligible, Mr. Veltry was a candidate on and an active supporter of the "Teamsters Rank and File" Slate.

Mr. Veltry is employed in the Plant and Maintenance Department of the NYU

Medical Center. On January 2, 1991 Mr. Veltry submitted a grievance alleging that one of his supervisors at the NYU Medical Center violated the collective bargaining agreement by performing bargaining unit work. In his grievance Mr. Veltry claims that Gary McDonald, a supervisor at the NYU Medical Center, configured a group of sensors to monitor temperatures in the HCC Building. Veltry claims that the collective bargaining contract specifies the type of work supervisors are permitted to perform, and that configuring sensor is not one of the jobs listed in the collective bargaining agreement.

Mr. Veltry's grievance was discussed at the January 19, 1991 meeting. At that time, NYU maintained that the supervisor's conduct in configuring a group of sensors to monitor temperatures in the hospital was not a violation of the contract because the contract did not expressly forbid supervisors from performing such work. The company also maintained that the supervisor's actions did not violate the contract because the monitoring of the sensors was done to avoid an emergency situation at the hospital.¹

Louis Smith, the business agent for Local 810, was present at the January 1991 meeting when Mr. Veltry's grievance was discussed. Smith recalls that NYU stated that it thought supervisors had the right to perform the work in question. At that meeting, NYU also stated, according to Smith, that even assuming such interpretation of the contract was correct, NYU had no intention of assigning the work to a supervisor again unless it was an emergency situation. Smith recalled that the company also stated that they had attempted to find bargaining unit employees to do the job, but that all qualified employees were busy performing other tasks. Smith stated that at this point he considered the grievance to be resolved, in that NYU stated that it did not intend to permit supervisors to configure the sensors again unless it was an emergency. Smith stated that he thought that since he considered the grievance resolved, he was surprised and confused when Mr. Veltry again raised the issue in the February 1991 grievance meeting.

Mr. Veltry raised the issue again at the February 1991 meeting. At this meeting, the NYU representatives told Veltry that the only reason the work had been performed by supervisory personnel on the date in question was due to the fact that all other unit members were busy and it was necessary to avoid an emergency situation. The company further stated that Mr. Veltry had a right to proceed to step two of the grievance procedure if he remained dissatisfied with the resolution of the grievance.² Mr. Veltry states that, subsequent to the February 1991 meeting, he has called NYU personnel

¹Section 9 of the Collective Bargaining Agreement provides that "no employee of the employer not a member of the bargaining unit may perform bargaining unit work except in cases of emergencies."

²Step 2 of the grievance procedure provides that if the grievance is not settled by the above conference within five (5) working days, the grievant shall immediately request a further conference between an unauthorized Union officer and a personnel representative of the Employer.

several times inquiring about step two of the grievance procedures and that NYU has not yet responded.

On or about May 2, 1991, Veltry confronted Smith outside the NYU Medical Center during a lunch hour demonstration being sponsored by the Union. Veltry approached Smith and inquired about the status of the grievance. Veltry claims that Smith said that the grievance was dead and that "if you don't like it, go to the Labor Board." At this point Veltry claims that he responded, "What's the problem? You don't want to cooperate?," and Smith answered, "Everything would be O.K. if you didn't fuck everything up, messing around with things." Veltry said that Smith went on to explain that the grievance was resolved because "they had said they wouldn't do it again."

Smith stated that he recalled speaking to Veltry about the grievance on May 2, 1991 in front of the NYU Medical Center. Smith recalled that he told Veltry at that time that he believed that the grievance was resolved because the company had promised not to permit supervisors to perform the work in question again. Smith disputes Veltry's allegation that he told Veltry "Everything would be O.K. if you hadn't fucked everything up by messing around."

Veltry states that Smith's statement to him on May 2, 1991 and Smith's reluctance to process the grievance any further demonstrate that Smith is retaliating against him and other members of Local 810 who work at the NYU Medical Center because of the members' participation in the delegate election process. Veltry has no further evidence to support his claim that Smith's refusal to process the grievance any further is motivated by a desire to retaliate against Veltry for Veltry's exercise of his political rights.

The evidence does not establish that Mr. Smith's refusal to process the grievance any further was motivated by a desire to retaliate against Mr. Veltry for Mr. Veltry's political activities. Rather, the evidence demonstrates that Smith was reasonably assured by NYU's statements that it would not commit the complained of conduct again. The evidence also established that NYU explained to Smith and Veltry that the only reason that the supervisor had performed the work in question was to avoid an emergency situation at the hospital. The grievance involved conduct which occurred on December 21, 1990, approximately five months ago. The investigation established that NYU has held to its promise and has not permitted supervisory personnel to configure a group of sensors for temperature monitoring since that date. Accordingly, Mr. Smith's view that the issue has been resolved appears to have merit.

It is a violation of the *Rules* for a Union to act against a member because of his or her political activity protected by the *Rules*. *Rules*, Article VIII, § 10. Based on the evidence disclosed pursuant to the investigation, the Election Officer concludes that Smith has satisfied his burden of showing that he had a reason, other than retaliating against Veltry for his campaign activity, for taking the action that he has taken with respect to processing the grievance filed by Veltry. The evidence presented by Veltry did not establish that he was treated in a discriminatory fashion or that his grievance was

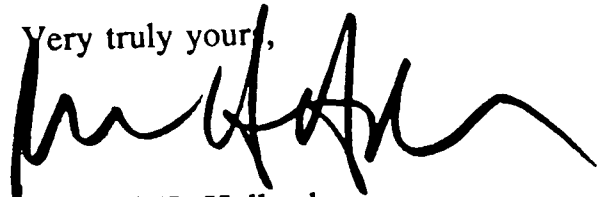
Steve Kindred
Page 4

ignored or not processed. Rather, the investigation disclosed that Smith pursued the grievance and believed that the dispute had been favorably resolved.

Finally, it is not necessary to resolve the factual dispute concerning Mr. Veltry's allegations averring Smith's May 2, 1991 statement to Mr. Veltry, since the import of such a statement is not easily discernible. Assuming arguendo that Smith did make the statement, such a statement, by itself, is insufficient to show discriminatory treatment or retaliation. In conclusion, the investigation did not reveal sufficient evidence of retaliation. 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
Amy Gladstein, Regional Coordinator