

OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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Election Officer

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September 9, 1991

Dennis J. Nagle
13 Bourne Street
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IBT Local Union 25
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544 Main St.
Boston, MA 02129

William Carnes
IBT Local Union 25
544 Main St.
Boston, MA 02129

Re: Election Office Case No. P-761-LU25-ENG

Gentlemen:

A protest was filed with the Election Office pursuant to Article XI of the Rules for the IBT International Union Delegate and Officer Election, revised August 1, 1990 ("Election Rules"). In his protest Dennis J. Nagle alleges that the Election Rules were violated by his employer, Star Market, and by his Local Union as a result of the manner in which grievances are handled under the collective bargaining agreement between Star Market and Local Union 25. The Election Officer's investigation of this protest revealed the following.

Dennis Nagle is an employee of Star Market working in the warehouse area of its Norwood, Massachusetts facility. Mr. Nagle is one of five shop stewards at that facility. On January 20, 1991, Nagle was nominated for the position of delegate to the 1991 IBT International Convention and was elected to that position on March 9, 1991.

Mr. Nagle's employment, and the employment of the Local 25 members he represents as shop steward, is governed by the terms of a collective bargaining agreement covering Warehouse employees entered into between Star Market and Local Union 25. The current agreement is effective May 14, 1989 to May 16, 1992. That collective bargaining agreement provides that upon exhaustion of the second step of the grievance procedure "either party may, if it so desires, have the grievance submitted to

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the Joint Area Committee in lieu of the permanent Arbitrator". Agreement, Article 7, Section 1. The agreement goes on to state that the decision of the permanent Arbitrator or the Joint Area Committee "shall be final and binding". Article VII §1 also provides that "[n]either the permanent Arbitrator nor the Joint Area Committee shall make any rules or render any decision in conflict with the provisions of this Agreement."

On or about January 18, 1991, Mr. Nagle filed a protest with the Election Office alleging that the Election Rules were violated as a result of the New England Joint Area Committee's ("New England Committee") "failure to hear" a grievance filed by Mr. Nagle concerning Star Market's refusal to pay stewards to attend arbitration hearings. The Committee ruled on January 16, 1991, that the issues raised in that grievance concerned maintenance of standards issues under Article 6¹ of the agreement which should be heard by the Eastern Conference Joint Area Committee ("Eastern Conference Committee"). Mr. Nagle alleged that the failure of the New England Committee to resolve the grievance was violative of the Election Rules contending that such failure was motivated by Nagle's election related activity. Mr. Nagle agreed to withdraw that protest, without prejudice, in response to the Local Union's agreement to resubmit the grievance to the New England Committee at its February meeting.

The Local Union resubmitted the grievance concerning steward's pay to the New England Committee at its February 20, 1991 meeting. In addition, another grievance filed by Mr. Nagle, this one alleging a unilateral change in the Star Market employee smoking policy, was submitted to the Committee. The New England Committee refused to reconsider its January ruling with respect to the stewards' pay grievance. The New England Committee then considered the grievance concerning the smoking policy in executive session and ruled that the grievance concerned an alleged violation of Article 6 and should be heard by the Eastern Conference Committee. Both grievances were considered by the Eastern Conference Committee and were denied in decisions dated April 23, 1991.²

¹ Article 6 of the Star Market agreement provides, in pertinent part, that

The Employer agrees that all conditions of employment relating to wages, hours of work, overtime differential and general working conditions shall be maintained at not less than the highest standards in effect at the time of the signing of this Agreement, and the conditions of employment shall be improved wherever specific provisions for improvement are made elsewhere in this Agreement.

² Mr. Nagle asked the Local Union to pay his expenses so that he could attend the hearing before the Eastern Conference Committee. That request was not granted by the Local Union and the grievance was presented by a Local Union business agent. There was no allegation that this refusal was discriminatory. Significantly the Business Agent who presented the grievances, Bill Carnes, was also a successful candidate for delegate who, like Mr. Nagle, ran

Mr. Nagle contends that the refusal of the New England Committee to resolve the stewards' pay and smoking policy grievances was violative of the Star Market collective bargaining agreement and was politically motivated in an effort to discredit him before fellow Star Market employees.³ The collective bargaining agreement is susceptible to an interpretation which supports Mr. Nagle's claim that the New England Committee's action was violative of the Star Market agreement. The agreement states that a party to the agreement, i.e., either Star Market or Local Union 25, can submit unresolved grievances to the New England Committee.⁴ The agreement further states that the decision of the Committee is final and that agreement may not be modified by the Committee.

While it appears that the referral⁵ of Article 6 grievances by the New England Committee to the Eastern Conference Committee for resolution may not be consistent with the terms of the Star Market agreement, the Election Officer does not conclude that conduct was violative of the Election Rules. In a decision dated January 17, 1990, the New England Committee referred a grievance to the Eastern Conference Committee after a deadlock. That grievance involved an overtime claim arising in part under Article 6 of the Star Market Agreement. Mr. Nagle's Business Agent, Bill Carnes, stated during the investigation that grievances involving alleged Article 6 violations are customarily referred to the Eastern Conference Committee by the New England Committee. The January 17, 1990 New England Committee decision is consistent with that representation.

against a slate composed of incumbent Local officials and their supporters.

³ Mr. Nagle's allegation that the action of the New England Committee in referring the grievances to the Eastern Conference Committee caused him political damage is undermined by the fact that he was elected as a delegate to the 1991 IBT International Convention after the New England Committee's "refusal to hear" the grievances that he filed.

⁴ The agreement only refers to "the Joint Area Committee" and not to the New England Joint Area Committee nor to the Eastern Conference Joint Area Committee. However, since it is undisputed that all unresolved Star Market grievances are referred to the New England Committee in the first instance, it appears that the reference in the agreement to Joint Area Committee is to the New England Committee.

⁵ There is a dispute concerning whether the New England Committee "refused to hear" the Article 6 grievance or whether the Committee voted to refer the grievance to the Eastern Conference after it determined that it involved an Article 6 dispute. However, there is no dispute that the New England Committee did not resolve this grievance. The Election Officer determined that it was not necessary to resolve this conflict in the characterization of the Committee's action in order to resolve this protest.

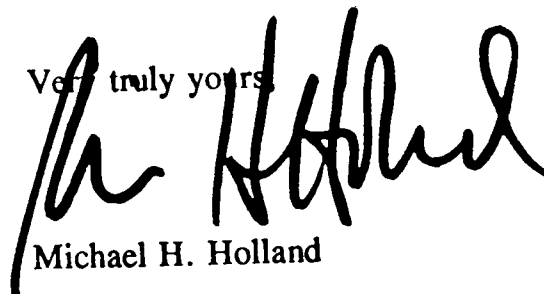
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While the referral of grievances alleging violations of Article 6 to the Eastern Conference Committee for resolution may be inconsistent with the grievance procedure contained in the Star Market Agreement, the Election Officer was unable to conclude that such referral was motivated by Mr. Nagle's election related activity. This conclusion is supported by the fact that this policy predates Mr. Nagle's election activity. In addition, it was not alleged and the Election Officer did not find that the referral policy was applied in a discriminatory manner to Article 6 grievances filed by Star Market stewards who were engaged in election related activity.

For the forgoing reasons, the instant 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

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