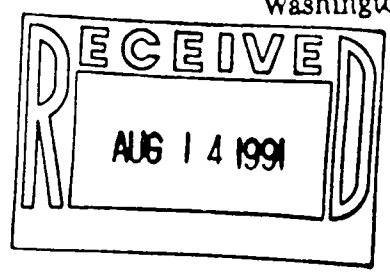


OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
25 Louisiana Avenue, NW
Washington, DC 20001

722/SCF

Michael H. Holland
Election Officer

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



August 9, 1991

TWHH
BJH
JJS

VIA UPS OVERNIGHT

Mark Serafinn
50 North St.
P.O. Box 105
Saunemin, IL 61769-0105

Gerald F. Reilly
President
Teamsters Local 722
344 N. 40th Rd.
La Salle, IL 61301

Frank L. Booth
736 Wright
LaSalle, Illinois 61301

Consolidated Freightways
Attn. John T. McGrath, Dispatch Manager
P.O. Box 481
Peru, IL 61354

Darrell R. Walker
1913 Shooting Park Road
Peru, Illinois 61354

Re: Election Office Case No. P-809-LU722-SCE
P-810-LU722-SCE
P-812-LU722-SCE

Gentlemen:

Pre-election protests were filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules") by Mark Serafinn, Frank L. Booth and Darrell R. Walker. Messrs. Serafinn, Booth and Walker were all certified delegates to the 1991 International Union Convention from Local Union 722. They protest the warning letters issued by their employer, Consolidated Freightways, upon their return from the 1991 Convention, contending that the warning letters were issued in retaliation for their activities related to the delegate and International Officer nomination and election processes.

Messrs. Serafinn, Booth and Walker are all members of Local Union 722, are all employed by Consolidated Freightways, and were all elected as delegates to the 1991 IBT International Union Convention from Local Union 722 in a contested election. Following the election, on April 15, 1991, Gerald Reilly, President of Local Union 722,

to: Independent Administrator Frederick B. Lacey
LeBoeuf, Lamb, Leiby & MacRae
One Gateway Center
Newark, New Jersey 07102-5311
Fax 201 622 6693

from: Mark R Serafinn
50 North Street
P.O. Box 105
Sauemin, Illinois 61769-0105
phone 815 832 4969

Re: Election Office Case No. P-809-LU722-SCE
P-810-LU722-SCE
P-812-LU722-SCE

I request a hearing before the Independent Administrator on the case numbers listed above. I received a copy of the out come of these protests when I returned from extended dispatches from my employment at Consolidated Freightways at 21:30 on 8\13\91.

An overview of the facts presented to the Election Officer to date.

1. This time off was an Art. 42 Union Float and not a vacation. Before I left for the Convention I signed out at Consolidated Freightways "union float to Orlando" on the in-bound sheet. This tells the company our intentions and when we will ready for dispatch. I also talked to the supervisor on duty at the time; Ron Hamlin; and told him I would be going to the Convention & told a little of it's importance to the Union. I said I'd be back a week from Tuesday and he said "have a nice time". There is no doubt in my mind that the company knew of our intentions.
2. The request from me to Jerry Reilly for a letter to the company for an Art. 42 Float clearly asks for June 22 through July 2 (you have a copy of that request sent to the Election Officer at the same time I sent it to Jerry Reilly) to cover travel time, union business and any logistics problems that may come up.
3. I used the time to return from Florida and put out an informational newsletter and mail it off to the 2275+ members of Local 722. This can only be considered Union business and part of our responsibilities of being Delegates. This is what the Government wants; a chance for our members to clean up our Union and the only way to do so is with participation in the election process. This is what I did; Union business and nothing else and I did it in record time knowing that I had to be back to work at C.F. sometime on the 2nd.
4. Talking to Jerry Reilly and the other Delegates there was no doubt as to the length of our time off. John McGrath had no doubt about it either but used a type-o (to instead of through) as a basis for the

letter. Before we left for the Convention John McGrath was asked point blank by Frank Booth if there were problems about our arrangements for the Art. 42 Float and Mc Grath had none at the time.

5. You must understand the gravity of letting this warning letter stand and the way it puts at risk our employment at Consolidated Freightways. At least two of our supporters; Tommy Anderson and Russ Duncan; have been fired on trumped up charges from C.F. Duncan was fired because a light bulb at his work station on the dock burned out. The charges against Anderson are equally lame. I can not over stress the importance of these warning letters. In the five and a half years that I've been at C.F. I have never received a letter for absenteeism. It is something that I am most careful of.

6. The decision by the Election Officer was based on an old and not followed vacation slip. We still use these slips because new ones are not available to us yet. At the end of vacation the company calls the employee back to work at 00:01 on the day following the date listed on the vacation request. The person on vacation does not call the company. The last line of this old form states "... that I will be expected to call myself back on the board, and that my failure to do so will result in disciplinary action being taken."; has NOT been adhered to in the five and one half years that I have been at C.F. If in fact John McGrath erroneously viewed an Art. 42 Float as a vacation then we should have been called by the company at 00:01 on July 2 to return to work. We were not called.

In summary:

Should the Delegates be punished because of a type-o by Jerry Reilly?
Should the Delegates be punished because of a question of semantics between Local 722 and the company?

Should the Delegates be punished because John McGrath refused to clarify his position on an Art. 42 Float?

The company's case is clearly based on past practice of a vacation; yet the company did not adhere to past practice for this case only by not calling us back to work at 00:01 on July 2nd. Should the

Delegates be punished because the company refused to play fair?

From any and all angles the Delegates are clearly not at fault for any misunderstanding between Jerry Reilly and John McGrath. We made every effort to get a clear understanding on what was expected of us and we thought we had done so.

Mark R. Serafinn

Mark R. Serafinn

August 13, 1991

IN RE:	:	91 - Elec. App. - 179 (SA)
	:	
MARK SERAFINN	:	
FRANK L. BOOTH	:	
DARRELL R. WALKER	:	
and	:	DECISION OF THE
	:	INDEPENDENT
CONSOLIDATED FREIGHTWAYS	:	ADMINISTRATOR
	:	
and	:	
	:	
LOCAL UNION NO. 722	:	

This matter arises out of an appeal from a decision of the Election Officer in Case Nos. P-809-LU722-SCE, P-810-LU722-SCE, and P-812-LU722-SCE. A hearing was held before me at which the following persons were heard by way of telephone conference: the complainants Mark Serafinn and Frank Booth; Susan Jennik, Esq. on behalf of the complainants; Daniel Hanners, on behalf of the appellant; John T. McGrath, Consolidated Freightways' dispatch manager; John Peerman, Consolidated Freightways' terminal manager; Charles Schmalz, Consolidated Freightways' labor manager; John J. Sullivan, Esq. on behalf of the Election Officer; and the Regional Coordinator, Peggy Hillman.

Messrs. Serafinn, Booth and Walker are all members of Local 722, are all employed by Consolidated Freightways, and were all elected delegates and/or alternate delegates to the 1991 IBT

International Convention in a contested election. They also all support the candidacy of Ron Carey, for General President. Following the delegate election, on April 15, 1991, Gerald Reilly, President of Local 722, wrote to Mr. McGrath, Consolidated Freightways' dispatch manager, requesting that Messrs. Serafinn, Booth and Walker be excused from work for union business to attend the Convention. The letter specifically stated that they be excused:

[F]rom Saturday, June 22, 1991, to Monday, July 1, 1991.

[Emphasis supplied]

The Convention commenced on Monday, June 24, 1991, and concluded on Friday, June 28, 1991. Messrs. Serafinn, Booth and Walker reported back to work at 11 p.m. on Tuesday, July 2, 1991. Subsequently, the three men received identical written warning letters from Consolidated Freightways stating that the period from Monday, July 1, 1991, until Tuesday, July 2, 1991, was neither excused nor authorized time off. The letter stated that the period of time off for union business only extended to, but not through, Monday, July 1, 1991, and that, therefore, Messrs. Serafinn, Booth and Walker should have reported back to work on July 1.¹

The complainants suggest that they have been unfairly disciplined because of their service as delegates to the Convention

¹ Another elected delegate, Daniel Hanners, although also covered by Mr. Reilly's letter, is not the subject of this appeal, as he began his regularly scheduled vacation immediately following the conclusion of the Convention.

and their political affiliation. There is nothing in the record, however, to suggest that the decision to issue the warning letters was motivated, even in part, by the complainants' service as delegates or political ties. Thus, it can not be said that the Rules For The IBT International Union Delegate And Officer Election (the "Election Rules") have been violated here.

Once the issue of whether the Election Rules were violated is removed from this protest, we are left with a simple challenge to Consolidated Freightways' interpretation of Mr. Reilly's letter to Mr. McGrath. The complainants argue that the words "to Monday, July 1, 1991," mean that they did not have to report to work until after that day. Consolidated Freightways argues that that phrase can only be properly construed as meaning that the complainants had to report back to work on Monday, July 1, 1991. Such a dispute is better left to the Local Union's internal grievance procedures.

This dispute is not akin to a "mixed-motive" type case. See, e.g., In Re: Braxton, 91 - Elec. App. - 108 (SA) (March 26, 1991). In such cases where disciplinary action, such as termination, is taken and that disciplinary action is motivated, at least in part, by protected political activity, the employer must demonstrate that the same action would have been taken even absent the protected conduct. The complainants here have come forward with nothing beyond their naked allegations, that their political activity motivated the issuance of the warning letters. Thus, we need not delve into the question of whether the warning letters would have

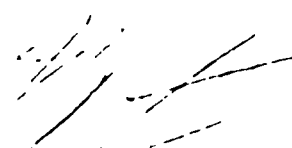
been issued absent the issue of the complainants' service as delegates and their support of Mr. Carey.

In this connection, however, it is worth noting that Consolidated Freightways' interpretation of the Reilly letter has some merit. As already stated, the Convention ended Friday, June 28, 1991. Complainants' duties as delegates ended with the adjournment of the Convention. This allotted complainants all of Friday evening, all of Saturday and all of Sunday to return to Illinois, rest and return to work on Monday, July 1, 1991. That complainants elected to drive back to Illinois, as opposed to flying back, and take care of other business on Monday,² is of no consequence. Consolidated Freightways had every reason to believe that the complainants would be back to work on Monday, and to interpret the phrase "to Monday, July 1, 1991," to mean just that.

Accordingly, the Election Officer's decision is affirmed to the extent the Election Officer has found no violation of the Election Rules. The other issues raised, i.e., whether the complainants' interpretation of the Reilly letter is correct or whether Consolidated Freightways' interpretation is correct, need not be resolved given the absence of any violation of the Election Rules.

² In his written submission, Mr. Serafinn stated that he "used the time to return from Florida and put out an informational newsletter and mail[] it off to the 2275+ members of Local 722." While Mr. Serafinn claims that this was part of his responsibility as a delegate, he is mistaken. His official delegate duties ended with the Convention.

It is important to emphasize that in finding no violation of the Election Rules, it is not being concluded that Consolidated Freightways had legitimate justification to issue the warning letters. This decision is limited only to determining whether there was a violation of the Election Rules.³



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

Dated: August 23, 1991

³ Shortly after the hearing concluded, I received a fax transmission from Ms. Jennik indicating that just as the telephone connection for the hearing was being disconnected, one of the Consolidated Freightways' representatives made some threatening remarks regarding Mr. Hanners. Ms. Jennik asked that I consider this as proof of Consolidated Freightways' improper motives. I wrote back to Ms. Jennik indicating that I did not hear the alleged remarks and, thus, would not consider her representations as to what was said in issuing this decision. The following day, I received a letter from the Election Officer indicating that after the conclusion of the hearing, Mr. Serafinn had filed a new protest with the Election Office alleging disparate treatment by Consolidated Freightways of Messrs. Serafinn, Booth and Walker and other Carey supporters. The Election Office is currently investigating this new protest. If the Election Officer finds that the alleged statements of the Consolidated Freightways' representative are relevant to the new protest, I trust he will investigate the issue of what, if anything, was said. I do note, however, that even if I were to accept Ms. Jennik's representations as to what was said, it would not change my determination on this appeal. Mr. Hanners was not issued a warning letter as he began his regularly scheduled vacation immediately following the Convention, and thus was not a party to this appeal.