

OFFICE OF THE ELECTION OFFICER
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Michael H Holland
Election Officer

October 14, 1991

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VIA UPS OVERNIGHT

Patrick N. Clement
4688 S. 112th St.
Greenfield, WI 53228-2525

R. V. Durham
c/o Hugh J. Beins, Esquire
Beins, Axelrod, Osborne
& Mooney
2033 K St., NW
Suite 300
Washington, D.C. 20006-1002

Re: Election Office Case No. P-938-LU710-CHI

Gentlemen:

This is a protest filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*"). The protester, Patrick Clement, is a supporter of Ron Carey for International Union General President. He alleges that R. V. Durham, who is also a candidate for International Union General President, threatened him on September 27, 1991. The protest was investigated by Regional Coordinator Julie Hamos and Adjunct Coordinator Deborah Schaaf.

On September 27, 1991 Mr. Durham and certain of his supporters were at the United Parcel Service ("UPS") Center in Oak Creek, Wisconsin for the purpose of engaging in campaign activities among the IBT members employed at that center. Mr. Clement was also at the UPS facility at the same time for the purpose of campaigning on behalf of Ron Carey and the other members of Mr. Carey's slate. Both Mr. Durham and Mr. Clement agree that they spoke to each other during the period that they were campaigning.¹

¹ Mr. Durham maintains that Mr. Clement stood immediately behind Mr. Durham when Mr. Durham introduced himself to the IBT members employed at the Oak Creek UPS facility. Mr. Durham claims that Mr. Clement, in a loud voice, would invite the members to vote for Ron Carey and attend the Ron Carey Slate rally during the time that Mr. Durham was attempting to speak to such members.

Mr. Clement contends that the conversation that occurred between him and Mr. Durham on September 27, 1991 was as follows:

Clement: "You know it's really funny, if I had a decent Teamster job, I wouldn't have the time to be out here campaigning for Carey, I just love it."

Durham: "Oh, you love it, huh?"

Clement: "Yes, sir!"

Durham: "After January when you're not working, we'll see just how much you love it. Try and find a job."

Clement: "After January, I might just have a new job!"

Mr. Clement claims that Mr. Durham's remarks constituted a threat. Mr. Clement does not allege that Mr. Durham or his political supporters did or said anything other than that set forth above.

Mr. Durham's version of the conversation is as follows:

Clement: "If I had a decent job I wouldn't have time to be out here."

Mr. Durham states that Mr. Clement went on to say that he, Mr. Clement, was enjoying himself.

Durham: "You should enjoy it while you can because after December you will have to find something else to do."

George Mueller, Secretary-Treasurer of Local 43 and Ron Strzelecki, Secretary-Treasurer of Local 344, who were campaigning with Mr. Durham at the time, support Mr. Durham's version of the conversation.

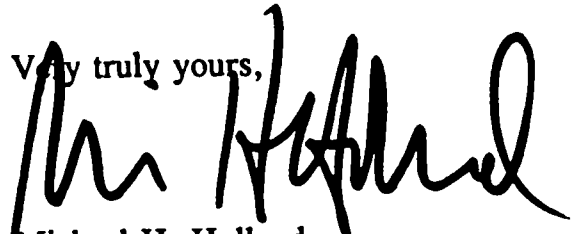
The Election Officer finds that the conversation or exchange between Mr. Clement and Mr. Durham in fact took place. There is nothing in the content or context of this exchange, however, which suggests that Mr. Durham was threatening Mr. Clement with loss of employment because Mr. Clement supported Ron Carey or the Ron Carey slate or for any other reason. Not only is there no evidence that Mr. Durham has power to obtain Mr. Clement's dismissal from employment, there was nothing in the words exchanged--even crediting Mr. Clement's version of the conversation--which suggest that such a threat was being made.

Patrick N. Clement
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The conversation was more in the order of ordinary campaign banter between two competing campaigners. Comments such as the type exchanged between Mr. Clement and Mr. Durham do not constitute threats or harassment. Any other finding would undermine the right of candidates and members to engage in campaign activities as provided under Article VIII, §10 of the *Rules*. For these reasons, 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/cb

cc: Frederick B. Lacey, Independent Administrator
Julie E. Hamos, Regional Coordinator
Deborah Schaaf, Adjunct Regional Coordinator

IN RE:

PATRICK N. CLEMENT

91 - Elec. App. - 208 (SA)

DECISION OF THE
INDEPENDENT ADMINISTRATOR

This matter arises as an appeal from a decision of the Election Officer in Case No. [REDACTED]. A hearing was held before me by way of teleconference at which the following persons were heard: the complainant, Patrick N. Clement; Susan Jennik, on behalf of Mr. Clement; Hugh Beins, on behalf of R.V. Durham; John J. Sullivan and Barbara Hillman, on behalf of the Election Officer; and Deborah Schaff, an Adjunct Regional Coordinator. The Election Officer also submitted a written Summary in accordance with Article XI, Section 1.a.(7) of the Rules For The IBT International Union Delegate and Officer Election (the "Election Rules").

Mr. Clement is a member of the IBT and a supporter of Ron Carey's candidacy for IBT General President. Mr. Clement claims that while he was campaigning in the vicinity of R.V. Durham, an opposing candidate for General President, on September 27, 1991, Mr. Durham threatened Mr. Clement that he would not be able to find a job after the election. Mr. Clement views this as a gross violation of his right to engage in the free exercise of political expression. See Election Rules, Article VIII, Section 10.

The following facts are not disputed. On September 27, 1991, Mr. Clement was campaigning and distributing literature on behalf

of Mr. Carey and his slate at the United Parcel Service facility in Oak Creek, Wisconsin. On that same day, Mr. Durham was also campaigning and distributing literature at the same facility with some of his supporters. While Mr. Durham was campaigning, Mr. Clement positioned himself directly behind Mr. Durham. As Mr. Durham would introduce himself to IBT members, Mr. Clement would start yelling to the members that they should attend an upcoming rally for Mr. Carey and that they should support Mr. Carey. Eventually, there was an exchange between Mr. Durham and Mr. Clement. This is where Mr. Clement's version of events diverges from Mr. Durham's.

Mr. Clement contends that the exchange was as follows:

Clement: "You know it's really funny, if I had a decent Teamster job, I wouldn't have the time to be out here campaigning for Carey, I just love it."

Durham: "Oh, you love it, huh?"

Clement: "Yes, sir!"

Durham: "After January when you're not working, we'll see just how much you love it. Try and find a job."

Clement: "After January, I might just have a new job!"

Mr. Durham alleges that the exchange was as follows:

Clement: "If I had a decent job I wouldn't have time to be out here."

Mr. Durham states that Mr. Clement went on to say that he, Mr. Clement, was enjoying himself.

Durham: "You should enjoy it while you can because after December you will have to find something else to do."

For purposes of resolving the protest, the Election Officer accepted Mr. Clement's version of the exchange.¹ The Election Officer did not find Mr. Durham's comments to be either threatening or intimidating. The Election Officer treated the exchange as "ordinary campaign banter." As stated by the Election Officer in his Summary:

Remarks of this kind, assuming they were made, are merely examples of the kind of posturing and ribbing that are endemic in various manifestations on the campaign trail. For the Election Officer to step into the role of censor of such standard campaign fare would undermine the right of members and candidates to campaign vigorously and freely in accordance with the Election Rules.

I find that the Election Officer reached the proper conclusion. While it is clear that the Honorable David N. Edelstein, the Election Officer, the Independent Administrator, the Investigations Officer, as well as the United States Attorneys Office, will not tolerate any conduct which can be reasonably construed as threatening or intimidating an IBT member because of his political expressions, it would be a stretch to find that Mr. Durham threatened or intimidated Mr. Clement here.

Following Mr. Clement's version, he opened the exchange with Mr. Durham by commenting that he "love[d]" to be out campaigning for Carey, and that if he (Clement) had a "decent Teamster job," he

¹ The Election Officer also noted that if he did need to make a credibility determination, he would credit Mr. Durham's version.

"wouldn't have the time to" campaign. To that, Durham responded that after January Mr. Clement would not be "working" and may have trouble finding a job. Given the context, it is apparent that what Mr. Durham was suggesting was that after the election, Mr. Clement would no longer be involved with the Carey campaign effort because, it was implied, Carey would lose his General Presidency bid. Thus, Mr. Clement would not be "working" i.e. campaigning, and he would be hard pressed to "find a job" with Carey.

This interpretation is supported by Mr. Clement's response to Mr. Durham. Mr. Clement did not express any fear or concern with Mr. Durham's remark and instead simply said "after January, I might just have a new job!" Mr. Clement himself, at the hearing, admitted that this statement was made as an off-the-cuff remark. Certainly, if Mr. Clement truly perceived Mr. Durham's comments as threatening, some other response would have been in order. I also find it significant that Mr. Clement did not at the time report Mr. Durham's alleged threatening comments to anyone in the vicinity. Mr. Clement is a self admitted long-time Union political activist. It is difficult to believe that Mr. Clement would not have seized upon the opportunity to capitalize immediately on a threat from a General President candidate whom he opposed.

Moreover, Mr. Clement ignores the fact that prior to the exchange he was deliberately shouting behind Mr. Durham in an attempt to obstruct Mr. Durham's campaign efforts. Mr. Clement must have anticipated that such conduct would, in all probability,

prompt some sort of exchange. In fact, it would appear that Mr. Clement's desired goal was to egg Mr. Durham on. Mr. Durham's words must also be weighed in this context.

In short, what we have here are two campaigners going head-to-head in the field. While the exchange may have been heated, to characterize it as anything more, as Mr. Clement would have us do, would be to ignore the realities of life on the campaign trail.

Accordingly, I affirm the Election Officer's denial of Mr. Clement's protest.

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

Dated: October 24, 1991