

OFFICE OF THE ELECTION OFFICER
/ INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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April 19 1991

VIA UPS OVERNIGHT

John W Braxton
4712 Windsor Ave
Philadelphia PA 19143

Richard Opalesky
Secretary Treasurer
IBT Local Union 623
1911 So 24th St
Philadelphia PA 19145

Re Election Office Case No Post34-LU623 PHL

Gentlemen

A post-election protest was filed on February 19 1991 by John Braxton alleging that the membership of Local 623 did not receive a democratic and fair election and eq esting that the election conducted on February 2 1991 be rerun by mail ballot pursuant to the *Rules for the IBT International Union Delegate and Officer Election* ev sed August 1 1990 (*Rules*) Mr Braxton alleged that he was fired on December 27 1990 shortly after his nomination on December 15 1990 as a delegate backing the candidacy of Ron Carey in retaliation for his election related activities He also asserted that his discharge discouraged members of the Local from voting for him because they believed that he had no job covered by the jurisdiction of the Local and no future with the Local Additionally Mr Braxton alleged that the Election Officer should not have approved a walk in ballot procedure for the Local but rather should have approved e the a mail ballot or a liberalized absentee procedure to insure a higher and more representative turnout

Local 623 conducted its nominations meeting on December 15 1990 Two nd d als were nom ated to run for the single delegate slot They were Richard Opalesky Secretary Treas e of Local 623 a d Joh B axton The election took place on February 2 1991 by walk n balloting The results were 75 votes for Opalesky and 43 otes for Braxton

Mr Braxton was discharged on December 27 1990 by UPS for allegedly failing to follow instructions and verbal abuse of supervisors That matter was protested by Mr Braxton in Election Office Case No P 210 LU623 PHL in which he alleged that UPS retaliated against him for his election conduct In a decision rendered on February 6 1991 the Election Officer found that Mr Braxton had made out a prima facie case

indicating that UPS supervisors were aware of and opposed his campaign activities but he found that UPS would have taken the discharge action regardless of Mr Braxton's protected activity. That matter was appealed to the Independent Administrator in Election Case No 91 Elec App 108 (SA). The Independent Administrator on March 26 1991 upheld the Election Officer reasoning that although Mr Braxton had made out a prima facie case his discharge for failing to follow instructions and verbal abuse of supervisors would have taken place even without the election related conduct. Although crediting Mr Braxton's claims that UPS supervisors were aware of and opposed to his election campaign activities the Independent Administrator applied the Wright Line standard 251 NLRB 10182 105 LRRM 1169 (1980) affm. 662 F 2d 899 (1st Cir 1981) cert. denied 455 U.S. 989 (1982) and found that the discipline given Mr Braxton was not so disproportionate as to demonstrate illegal motivation on the part of UPS. Neither the Election Officer or the Independent Administrator ruled on the propriety of the discharge on whether the discharge was for just cause or otherwise in accordance with the collective bargaining agreement between the Union and UPS.

In addition to the foregoing protest, on February 3 1991 Mr Braxton filed an additional protest in which he alleges that the Teamsters officials who were members of the Joint Grievance Committee (JGC) which heard his discharge appeal were biased against him and upheld his discharge because of his activities for the Teamsters for a Democratic Union (TDU). He alleges that at least one of the members of the JGC voted against his grievance because of election related animus. Braxton argues that the improper decision of the JGC affected the outcome of the election. That protest has not yet been decided by the Election Officer.

The walk in election at Local 623 took place on February 2 1991. John Braxton did not file his post-election protest until February 19 1991. Pursuant to Article XI § 1 (b)(1)(a) election protests are to be filed within seventy two hours of the posting of the official election tally sheet. The election tally sheet at Local 623 was posted on February 5 1991. Consequently the protest by John Braxton in this post-election matter is DENIED as untimely.

Assuming that the decision of the JGC was improper however the Complainant has not demonstrated that the decision to uphold his discharge may have affected the outcome of the election. Post-election protests will not be remedied unless the alleged violation may have affected the results of the Election Rules Article XI § 1(b)(2). For a violation to have affected the results of the election there must be a meaningful relationship between the violation and the results of the election. See Wirtz v. Local Unions 410, 410A, 410B & 410C, International Union of Operating Engineers 366 F 2d 438 (2nd Cir 1966). The evidence shows no causal relationship between the alleged violation and the outcome of the election as would be required for a remedy to be imposed. Dole v. Mailhandlers, Local 317 132 LRRM 2299 (D C M D Alabama 1989).

One month prior to his discharge Braxton ran against Opalesky for President of the Local. In that election more than twice as many Local members voted and

Opalesky won 198 to 49. The decreased turnout for the delegate election, therefore, resulted in virtually no change in the number of votes received by Mr. Braxton. The similar number of votes received in the two elections indicates that the JGC's decision on Mr. Braxton's discharge had very little effect upon his base of support.

Mr. Braxton does not contend that his discharge prevented him from campaigning for delegate and the evidence is that he was indeed able to vigorously campaign after his discharge. Indeed, Mr. Braxton stated to a newspaper that his discharge had the effect of getting some people "fired up." Thus, the evidence is insufficient to conclude that the JGC's decision affected the vote in favor of his opponent.¹

Accordingly, Mr. Braxton's post-election protest regarding his discharge and its impact on the election is DENIED.

John Braxton also alleged in his post-election protest that the Election Officer should not have approved the walk-in procedure used in this election, but rather should have required a mail ballot or liberalized absentee procedure to achieve a higher and more representative turnout. Like the post-election protest in regard to his discharge, this post-election protest, filed on February 19, 1991, is untimely since the Local Union Election Plan was approved by on October 11, 1990. Although Mr. Braxton wrote to the Election Officer and/or his representatives prior to the Plan's approval giving his opinion with regard to his preference for a mail ballot, and again wrote, on October 31, 1990, after the Plan had been approved, disagreeing with the Local Union Election Plan, Mr. Braxton did not file an election protest with regard to this matter. Consequently, to raise this issue post-election is patently untimely.

Additionally, the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*"), specifically provide that the Election Officer has the ultimate authority to approve the Local Union Election Plan. The Independent Administrator has concurred with that view, e.g. letter from Frederick B. Lacey to John Neal, IBT Local 135. Article II, § 2 Further, Local 623 is a relatively small Local; its average membership for the two year period prior to May 30, 1990 was 828 members. The vast majority of the members work for one employer. In-person elections are appropriate where the number of members is not overwhelming and where the members are located in a relatively compact geographical location, demonstrated here by the fact that most work for a single employer.

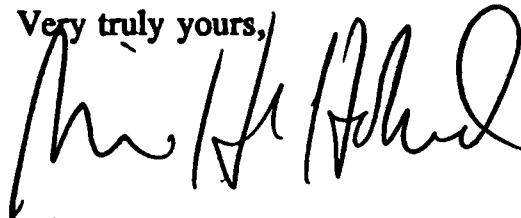
Accordingly, the post-election protest filed by Mr. Braxton with regard to the method of voting is DENIED.

¹Braxton claims that his potential voters did not turn out or vote for him because of uncertainty over whether he could be a delegate despite his discharge. Under the *Election Rules*, Braxton's discharge does not disqualify him from being a delegate. In IBT Local 174, for example, delegate Richard Kraft was elected subsequent to his discharge from Yellow Freight Systems.

John W. Braxton
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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
Peter V Marks, Sr., Regional Coordinator

623/PHL

XMKH
BTH
JS

IN RE:

JOHN BRAXTON

and

RICHARD OPALESKY

and

IBT LOCAL UNION NO. 623

91 - Elec. App. - 139 (SA)

DECISION OF THE
INDEPENDENT
ADMINISTRATOR

APR 30 1991

This matter arises out of an appeal from a Decision of the Election Officer in Case No. ~~1088-91-1001~~. A hearing was held before me by way of telephone conference on April 29, 1991, at which the following persons were heard: the complainant, John Braxton; Wendy Chierici, an Adjunct Regional Coordinator; and John J. Sullivan and Barbara Hillman, on behalf of the Election Officer.

Local 623 conducted its nominations meeting on December 15, 1990. Two individuals were nominated to run for the single delegate slot available to the Local. Richard Opalesky, Local 623's Secretary-Treasurer, was one of the delegate candidates. John Braxton was the other. The election took place on February 2, 1991, by walk-in balloting. The result of the election was 75 votes for Mr. Opalesky and 43 votes for Mr. Braxton.

Mr. Braxton was discharged from his employment with United Parcel Service ("UPS") on December 27, 1990, for allegedly failing to follow instructions and for verbally abusing supervisors. That matter was protested by Mr. Braxton in the Election Officer Case No. P-210-LU623-PHL. In a February 6, 1991, Decision, the Election Officer found that Mr. Braxton had established a prima facie case indicating that UPS supervisors were aware of and opposed to his campaign activities. Nonetheless, the Election Officer found that UPS would have taken the discharge action regardless of Mr. Braxton's political activity. After extensive investigation on remand, the Independent Administrator affirmed the Election Officer's ruling in 91 - Elec. App. - 108 (SA) (March 26, 1991). Neither the Election Officer nor the Independent Administrator ruled on the merits of the discharge, or whether the discharge was for just cause or otherwise in accordance with the collective bargaining agreement between the Local and UPS. The Election Officer's determination and the Independent Administrator's affirmance of that determination rested solely on a finding that Mr. Braxton's discharge did not violate the Rules For The IBT International Union Delegate And Officer Election (the "Election Rules").

On February 3, 1991, Mr. Braxton filed an additional protest with the Election Officer. In that protest (Election Officer Case No. P-451-LU623-PHL) Mr. Braxton alleges that the Teamster officials who were members of the Joint Grievance Committee ("JGC")

which heard his internal discharge appeal were biased against him and upheld his discharge because of his political activities. Mr. Braxton specifically alleges that at least one of the members of the JGC voted against his grievance because of election-related animus. The Election Officer's decision on that protest is pending.

On February 19, 1991, Mr. Braxton filed the post-election protest which is the subject of this appeal. In his protest, Mr. Braxton alleges that the action of the JGC affected the outcome of the election. See Election Rules, Article XI, Section 1.b.(2). The Election Officer ruled that:

Assuming that the decision of the JGC was improper, however, the Complainant has not demonstrated that the decision to uphold his discharge may have affected the outcome of the election.¹

The first issue that must be addressed is the timeliness of Mr. Braxton's protest. The walk-in election at Local 623 took place on February 2, 1991. The votes were counted that day and Mr. Braxton observed the count and knew the results that day. The election results were posted on or about February 5, 1991. Article

¹ At the hearing before me, the Election Officer explained that Mr. Braxton's February 3, 1991, protest will be dealt with separately. If the Election Officer finds that a JGC panel member voted because of election-related animus, an appropriate remedy will be ordered. Not wanting to delay the certification of Local 623's election results, however, the Election Officer has addressed the specific question of whether the JGC's actions may have affected the outcome of the election in the post-election protest which is the subject of this appeal. In rendering his decision, the Election Officer has assumed, for purposes of argument, that the JGC's decision was wrong.

XI, Section 1.b.(1)(a) of the Election Rules provides that post-election protests must be filed "within seventy-two (72) hours of the posting of the official election tally sheet . . ."

As noted, the election tally sheet at Local 623 was posted on or about February 5, 1991. As also noted, Mr. Braxton did not file his protest until some 14 days later on February 19, 1991. At the hearing before me, Mr. Braxton himself acknowledged that he filed the protest as an "after-thought." Mr. Braxton had assumed that his protest of February 3, 1991, would incorporate his concerns regarding the effect on the outcome of the election of the JGC's action. Upon giving it further thought, however, Mr. Braxton decided to file a separate protest.

It is clear that Mr. Braxton's protest is out of time. Given the overlapping issues with his pending protest of February 3, 1991, however, it would serve no useful purpose to avoid the merits of this appeal. Certainly, the issue of whether the JGC's action (if found to be a violation of the Election Rules) "may have affected the outcome of the election," is one that the Election Officer may need to resolve at a later date. Thus, given that the Election Officer has assumed for purposes of this matter that the JGC's action was indeed improper, we can resolve this issue now. In the interest of expediting matters and finalizing the result of the Local 623's election, the merits of this appeal will be addressed.

In short, Mr. Braxton alleges that members of his Local may have been deterred from voting for him after he was discharged because they may have feared that he had no future in the Local. In November 1989, however, prior to his discharge, Mr. Braxton was defeated in his run for the office of President of the Local by a vote of 198 to 49. Mr. Braxton's showing in that election (49 votes) is comparable to a showing in the delegate election (43 votes). Percentage-wise, Mr. Braxton actually faired better in the delegate election than he did in his run for President prior to his discharge.

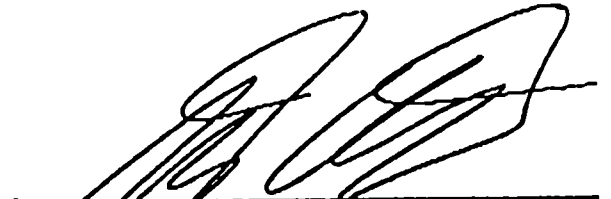
Mr. Braxton himself observed in a newspaper interview that his discharge had the effect of getting some people "fired up."

Presumably to show that the Local membership would know that his discharge did not bar Mr. Braxton's candidacy, the Election officer stated in his Summary:

In addition, Mr. Braxton's claim that the decreased turn-out in the delegate election was caused by his discharge is speculative. There is nothing in the Election Rules that preclude a member from serving as a delegate because he loses his job. Nor would this be the first time a discharged employee was elected to serve as delegate. In fact, Richard Kraft was elected from Local Union No. 174 in Seattle after he was discharged from employment with Yellow Freight, Inc.

Nor does Mr. Braxton's discharge provide a ground for immediate loss of membership in the Local Union. The IBT Constitution provides that a member who loses his employment in the jurisdiction of a Local Union is not mandatorily issued a withdrawal card for a period of six months after the month in which the member becomes unemployed. Article XVIII, Section 6(a). That six-month period will not have expired for Mr. Braxton until the conclusion of June 1991, the month in which the Convention is held.

I agree that Mr. Braxton's contention that he lost the election because of his discharge is, at best, speculative. Accordingly, the denial of Mr. Braxton's protest by the Election Officer is affirmed.²



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

Dated: April 30, 1991

² Mr. Braxton stated at the hearing that if the Election Officer decided to rerun the election he should consider conducting a mail ballot as opposed to an in-person vote. Given that the Election Officer has decided not to rerun the election, there is no need to address this contention.