



OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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Michael H. Holland
Election Officer

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April 22, 1992

VIA UPS OVERNIGHT

Robert S. Naslanic
441 Clair Street
Garden City, MI 48135

United Parcel Service
29855 Schoolcraft
Livonia, MI 48150

James F. Esser
President
IBT Local Union 243
2741 Trumbull Avenue
Detroit, MI 48216

Re: Election Office Case No. P-1154-LU243-MGN

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Robert Naslanic. In his protest, Mr. Naslanic contends that the officers and representatives of his Local Union, Local Union 243, failed to fairly represent him in the contractual grievance procedure with his employer, United Parcel Service ("UPS"), in retaliation for Mr. Naslanic's partisan political positions during the 1991 IBT International Union officer election. The protest was investigated by James De Haan, Regional Coordinator.

The instant protest is related to Election Office Case No. P-1152-LU243-MGN, affirmed 91-Elec. App.-252 (SA), wherein Mr. Naslanic claimed that he was disciplined by his employer, UPS, in retaliation for his political posture during the recently concluded 1991 IBT International Union officer election. In that prior protest the Election Officer found, as affirmed by the Independent Administrator, that the evidence did not justify concluding that the discipline imposed on Mr. Naslanic by UPS was sufficiently disparate to hold that UPS was motivated by Mr. Naslanic's election-related activities.

At the time the decision in Election Office Case No. P-1152-LU243-MGN was issued, the various grievances filed by Mr. Naslanic against UPS - including the grievance related to his suspension at issue in that case -- had not been concluded. Accordingly, the Election Officer noted that Mr. Naslanic's expressed concern regarding the possibility that Local 243 would not properly represent him in the grievance procedures was not ripe for determination. The instant protest was filed by Mr.

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Naslanic subsequent to the conclusion of the grievance proceedings pursuant to the collective bargaining agreement.

As delineated in the decision in Election Office Case No. P-1152-LU243-MGN, affirmed 91-Elec. App.-252(SA), the instant matter arises from a disciplinary suspension imposed upon Mr. Naslanic by UPS for excessive absenteeism. Mr. Naslanic was suspended for five (5) working days, a one-week suspension. Mr. Naslanic actually, however, lost eight (8) days of pay: in addition to the five (5) days of his suspension, Mr. Naslanic was not paid for the Christmas holiday which occurred during the period of his suspension. Further, he was not permitted by UPS to perform extra or overtime work on two additional work days, one (1) overtime day occurring during the period of his suspension and the other overtime day occurring immediately after the conclusion of the five (5) day suspension period, but apparently prior to the time Mr. Naslanic returned to work after the suspension.

As a result of the foregoing, a number of grievances were filed by Mr. Naslanic. The grievances were heard by a joint state level UPS-IBT panel on March 19, 1992, along with two (2) other grievances filed by Mr. Naslanic, unconnected with the instant protest. The remaining two (2) grievances concerned UPS supervisory employees performing work reserved to IBT represented employees pursuant to the collective bargaining agreement and Mr. Naslanic being improperly bypassed by UPS for a fifteen (15) minute overtime assignment.

The last two grievances described above were deadlocked and will accordingly be heard in the future by the Joint Area Committee of UPS and the IBT. With respect to the remaining grievances, Mr. Naslanic's position was upheld in certain respects and denied in others. Regarding holiday pay, UPS paid him the holiday pay for the Christmas holiday which arose during Mr. Naslanic's period of suspension. It was also agreed that UPS improperly failed to permit Mr. Naslanic the overtime assignment for the day which occurred after the conclusion of the five (5) day suspension and UPS paid back pay for that day.¹ The remaining portions of Mr. Naslanic's grievances were denied; UPS was found to have properly suspended him for five (5) days for excessive absenteeism and was found not to have violated the collective bargaining agreement for refusing to permit Mr. Naslanic to work during the period of suspension, even on an overtime or extra-work basis.

As the Election Officer previously noted in Election Office Case No. P-1152-LU243-MGN, Mr. Naslanic was an active participant in the totality of the election processes leading to the certification of the IBT International Union officers. Mr.

¹ These matters were settled in Mr. Naslanic's favor by agreement between Local 243 and UPS prior to the commencement of the formal panel hearing.

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Naslanic has filed numerous protests with the Election Officer during the period of the 1991 IBT International Union officer elections, many of which have been against Local Union 243. The officers and other representatives of Local 243 were clearly aware of Mr. Naslanic's partisan political position during the recently concluded 1991 IBT International Union officer election. The partisan political position advocated by Mr. Naslanic -- support for IBT General President candidate Ron Carey and the Ron Carey Slate -- was not endorsed by the officers and representatives of Local Union 243, who supported R. V. Durham and the R.V. Durham Unity Team for International Union officer positions.

The Election Officer has, however, been presented with no evidence demonstrating that Local Union 243 failed to properly represent Mr. Naslanic at the March 19, 1992 grievance hearing. There is no evidence that Local 243 failed to present any evidence Mr. Naslanic felt relevant to support his grievances, or that Local 243 presented any evidence that Mr. Naslanic felt to be improper. As noted above, Local 243 was partially successful in Mr. Naslanic's behalf; the Local obtained two (2) days back pay for him. The Election Officer further previously found in Election Office Case No. P-1105-LU243-MGN as affirmed by the Independent Administrator in 91-Elec. App.-252 (SA) that the period of suspension imposed upon Mr. Naslanic by UPS was insufficiently disparate to suggest discrimination. For the same reasons, the failure of the grievance panel to find that the imposition of a five (5) day suspension for the number of days of absences incurred by Mr. Naslanic during calendar year 1991 did not violate the collective bargaining agreement does not justify an inference that Local Union 243 failed to properly represent Mr. Naslanic -- failed to properly argue his grievance - before the grievance panel and that such failure was the result of the animus the officers of the Local bore Mr. Naslanic because of Mr. Naslanic's election-related activity. Similarly, a grievance determination that overtime assignments are not available to employees on suspension is within the ambit of arbitration precedent, negating any inference that the decision resulted from improper representation.

For the foregoing reasons the protest is DENIED.²

² On March 19, 1992, while the grievance panel was considering Mr. Naslanic's grievances, Mr. Naslanic and his representatives from Local 243 left the room for a short period of time to caucus. During such interval, one of the members of the grievance panel, Dave Robinson -- not a member of Local Union 243 -- opened Mr. Naslanic's briefcase and noted that Mr. Naslanic appeared to be taping the proceeding. Mr. Naslanic and his Local 243 representatives were informed of Mr. Robinson's actions by a Local 243 steward who remained in the hearing room during the period of the Local's caucus. A lengthy discussion ensued as to the appropriateness of an individual taping the panel proceedings. Ultimately Mr. Naslanic was told that he was not to tape the proceedings, to turn off his tape recorder and to remove the recording tape. Mr.

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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/ca

cc: Frederick B. Lacey, Independent Administrator

James De Haan, Regional Coordinator

Martin Wald, Esquire
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Naslanic complied. Mr. Robinson was then removed from the panel and any decision-making responsibility concerning Mr. Naslanic's grievances. Mr. Robinson was replaced by another Union representative -- also not a member of Local Union 243 -- and the entire grievance proceeding commenced anew for the benefit of the newly added panel member. Whether Mr. Robinson was acting appropriately in opening Mr. Naslanic's briefcase and whether the instructions to Mr. Naslanic to refrain from recording the proceedings was proper, the scenario related above clearly did not impact upon Local 243's representation of Mr. Naslanic and did not appear to impact upon the ultimate decision of the panel on his grievances.

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cc: Raymond M. Carey, Esquire
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