

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

Michael H. Holland  
Election Officer

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

September 9, 1991

**VIA UPS OVERNIGHT**

Ken Hamm  
7513 Orville  
Kansas City, KS 66112

Dan Johnson  
President  
IBT Local Union 41  
4501 Van Brunt Blvd.  
Kansas City, MO 64130

**Re: Election Office Case No. P-846-LU41-MOI**

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Ken Hamm, a member of Local Union 41. Mr. Hamm contends that he was disciplined by his employer, United Parcel Service ("UPS"), in retaliation for his support for the candidacy of General President candidate Ron Carey. The protest was investigated by Adjunct Regional Coordinator William O. Eisler.

On August 1, 1991 from 7:30 a.m. to 8:30 a.m. Mr. Hamm and George Young, also a Local 41 member employed at UPS, passed out literature supportive of General President candidate Ron Carey's campaign outside the front gate of the UPS terminal at which they are employed. Several UPS supervisors, including Mr. Hamm's supervisor Mark Bollig, observed Messrs. Hamm and Young. Mr. Hamm claims that he and Mr. Young got disapproving looks from the supervisory employees. UPS denies that its supervisory disapproved of Messrs. Hamm and Young for supporting Mr. Carey. At 8:30 a.m. Mr. Hamm ceased his campaign activities and entered the terminal to report to work; Mr. Young was on vacation on August 1, 1991.

On August 2, 1991, prior to his starting work, Mr. Hamm was asked by Mr. Bollig to go to Mr. Bollig's office. Mr. Bollig told Mr. Hamm he wanted to review Mr. Hamm's work performance on August 1, 1991. Mr. Bollig told Mr. Hamm that his work performance did not meet the standard set by UPS. Mr. Bollig further notified Mr. Hamm that his work performance on August 1, 1991 was worse than his work performance on July 31, 1991; on July 31, 1991 Mr. Hamm was 1.3 hours "over," i.e. worse than the standard, while on August 1, 1991 his work performance was 2.23 hours over standard. Mr. Hamm countered that he had additional package pick-ups on August 1, 1991 and that the temperature on that date, 100° fahrenheit, made it impossible to work at his normal pace. Mr. Bollig did not accept Mr. Hamm's explanation and

Ken Hamm  
August 15, 1991  
Page 2

inserted a Form 1000 in Mr. Hamm's personnel file.<sup>1</sup>

Mr. Hamm claims that other UPS employees' performance deteriorated at least as much if not more than his did on August 1, 1991. None of these other employees were disciplined or given a performance review. Mr. Hamm thus contends that the action taken against him by UPS constitutes a disparate treatment based upon his campaign activities.

The Election Officer has reviewed the performance of all UPS employees holding the same job as Mr. Hamm. The Election Officer's investigation determined that at least one other driver's work performance suffered a greater deterioration between July 31, 1991 and August 1, 1991. Such driver however was "under", i.e. better than, the standard on both July 31 and August 1. The company contends that it does not review the performance of drivers who meet or exceed its standards, regardless of variation in daily production, as long as the driver always continues to exceeds the standard.

Mr. Hamm contends that there was one driver over standard on August 1, 1991, whose performance deteriorated more than Mr. Hamm's performance did. The Election Officer's investigation determined that this driver did not work on a job comparable to Mr. Hamm's on August 1, 1991. He did however so work on both July 30 and July 31, 1991. He was under standard on July 30 but over standard on July 31. His performance between those dates deteriorated by more than two hours while Mr. Hamm's deterioration between July 31 and August 1 was only .93 hours. This driver did not receive a performance review.

The Election Officer investigation determined that this other driver was the newest driver in Mr. Hamm's terminal. Further on July 31, 1991 he was working "splits"; instead of working a single route, this driver was working a route comprised of sections of two or three other drivers' routes. Accordingly, the geographical area he had to cover was less compact than if he had been driving only a regular route suggesting that fewer pickups or deliveries could be accomplished within the same number of hours.

The evidence demonstrates that Mr. Hamm engaged in campaign activities and these activities were known to supervisors. The evidence of animus against him by UPS because of these activities is weak; "disapproving looks" are not readily susceptible to objective analysis and all the supervisors deny that their looks were disapproving. Even assuming that Mr. Hamm has established a *prima facie* case of animus as a basis for the discipline, UPS has rebutted the conclusion that its actions were based on Mr. Hamm's campaign activities. Mr. Hamm's performance on August 1, 1991 deteriorated more

---

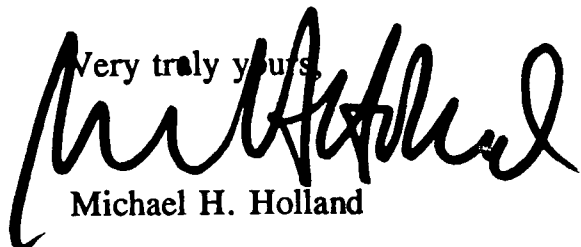
<sup>1</sup> Mr. Hamm contends that he was thus disciplined. UPS contends that a Form 1000 is only a performance review and not discipline.

Ken Hamm  
August 15, 1991  
Page 3

than any other driver comparably situated. The company's position that they do not perform reviews of drivers whose performance is below or better than standard, even assuming performance deterioration is a reasonable one. While the performance of one other driver in the same period of time did deteriorate more than Mr. Hamm's performance, UPS has produced credible evidence of extenuating circumstances, thus justifying its treatment of him in a different manner than it treated Mr. Hamm.

The Election Officer has found no basis for concluding that Mr. Hamm was treated disparately by UPS or that his treatment by UPS stemmed from his campaign activities. Accordingly, this 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/cdk

cc: Frederick B. Lacey, Independent Administrator  
Robert O. Eisler, Adjunct Regional Coordinator  
Michael D. Gordon, Regional Coordinator (For Information Only)  
Martin Wald, Esq.  
UPS  
14650 Santa Fe Trail Dr.  
Lenexa, KS 66215