

October 24, 1995

VIA UPS OVERNIGHT

Craig Gonsalves
4836 Larimer Way
Castro Valley, CA 94546

Kim Muniz
United Parcel Service
8400 Pardee Street
Oakland, CA 94621

Teamsters Local Union 70
70 Hegenberger Road
Oakland, CA 94621

Re: Election Office Case No. P-160-LU70-CSF

Gentlepersons:

A pre-election protest was filed with the Election Officer pursuant to Article XIV, Section 2(b) of the *Rules for the 1995-1996 IBT International Union Delegate and Officer Election ("Rules")* by Craig Gonsalves, a member of Local Union 70 and a candidate for convention delegate, who alleges that Local Union 70 failed to represent him fairly in the grievance procedure because of its opposition to his candidacy for delegate.

The protester received a notice of discharge due to his alleged failure to conform to his employer's personal grooming standards. The protester charges that his local union representative failed to present documents and photographs that the protester believed would support his grievance.

Local Union 70 Business Representative Marty Frates, who represented the protester in his grievance, asserts that the materials he declined to present at the grievance hearing "had little value." Mr. Frates notes that the protester's proposed discharge was reduced to a five-day suspension. Mr. Frates states, "The results speak for themselves."

This protest was investigated by Regional Coordinator Matthew D. Ross.

The protester is employed by United Parcel Service ("UPS"), which threatened to discharge him because the length of his hair allegedly violated its grooming standards. During the grievance hearing, the protester asked Mr. Frates to produce on behalf of the union, petitions with signatures of fellow employees registering their agreement that the protester had received

unfair treatment by UPS, letters of support from other employees, a letter from an attorney consulted by the protester, and photographs of other employees with hair as long or longer than that of the protester.

The grievant agreed, however, that Mr. Frates presented credible evidence at the hearing of disparate treatment from two witnesses with long hair, one of whom testified that he was repeatedly admonished for the length of his hair, but never disciplined despite his refusal to cut his hair.

To prevail in a claim that the union breached its duty of fair representation, the complaining party must demonstrate that the union acted in a manner that was "arbitrary, capricious, or discriminatory." See In re: Braxton, 91 - Elec. App. - 147 (SA) (May 10, 1991) (citing Thomas v. UPS, 890 F.2d 909, 920-21 (7th Cir. 1989)).

The protester has failed to meet his burden of proof. The proposed documents would have had little weight in the grievance procedure. While the photographs suggested by the protester may be theoretically relevant, the proposition that the photographs might have supported was otherwise established through the testimony presented by Mr. Frates. There can be no doubt that Mr. Frates' strategic decision did not "undermine[] the integrity of the arbitration process." See In re Braxton, supra.

Accordingly, the protest is DENIED.

Any interested party not satisfied with this determination may request a hearing before the Election Appeals Master within one day of 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:

Kenneth Conboy, Esq.
Latham & Watkins
885 Third Avenue, Suite 1000
New York, NY 10022
Fax (212) 751-4864

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Copies of the request for hearing must be served on the parties listed above as well as upon the Election Officer, 400 North Capitol Street, Suite 855, Washington, D.C. 20001, Facsimile (202) 624-3525. A copy of the protest must accompany the request for a hearing.

Sincerely,

Barbara Zack Quindel
Election Officer

cc: Kenneth Conboy, Election Appeals Master
Matthew D. Ross, Regional Coordinator