

June 6, 1996

VIA UPS OVERNIGHT

Danny Bruno
7713 Ramona Avenue
Rancho Cucamonga, CA 91730

Mary Skulski
2646 Doolittle Street
Arcadia, CA 91006

Kirk Tanioka
United Parcel Service
3000 E. Washington Boulevard
Los Angeles, CA 90023

Bob Kikuchi, President
Teamsters Local Union 396
880 Oak Park Road, Suite 200
Covina, CA 91724

Leroy Stapley
United Parcel Service
3000 E. Washington Boulevard
Los Angeles, CA 90023

Martin Wald
Schnader, Harrison, Segal & Lewis
1600 Market Street, Suite 3600
Philadelphia, PA 19103

Felicia Tripp
United Parcel Service
3000 E. Washington Boulevard
Los Angeles, CA 90023

Re: Election Office Case No. P-740-LU396-CLA

Danny Bruno, a member of Local Union 396, filed this pre-election protest pursuant to Article XIV, Section 2(b) of the *Rules for the 1995-1996 IBT International Union Delegate and Officer Election ("Rules")*. The protest is filed against two supervisors employed by United Parcel Service ("UPS" or "the employer"), Pre-Load Manager Leroy Stanley and Supervisor Felicia Tripp, and two representatives of Local Union 396, President Bob Kikuchi and Shop Steward Bob Magnana. The protester alleges that UPS and Local Union 396 agreed to reduce the seniority of Mary Skulski, another member of Local Union 396, because she supported the Members' Choice slate of delegates in

the Local Union 396 delegate election held March 14, 1996. The Members' Choice slate, which included Mr. Bruno, opposed the slate led by Local Union 396 Secretary-Treasurer Raul Lopez. The protester further alleges that Mr. Kikuchi retaliated against Ms. Skulski because of her political activities by threatening Mr. Magnana that he could lose his job if he pursued Ms. Skulski's grievance.

UPS denies that Ms. Skulski's seniority was reduced because of her political activities. The employer contends that pursuant to the collective bargaining agreement covering Local Union 396 and UPS, Ms. Skulski lost seniority when she refused a transfer after the closure of the distribution center where she was employed. Local Union 396 agrees that an employee loses seniority by refusing a transfer after closure of a distribution center and denies that it has retaliated against Ms. Skulski because of her political activities.

Adjunct Regional Coordinator Michael D. Four investigated the protest.

1. Allegations that UPS and Local Union 471 Retaliated Against Ms. Skulski

In February 1996, UPS merged two distribution centers in the Los Angeles area. As part of the change in operations, an employee named Miguel Rodriguez moved to the hub where Ms. Skulski was employed as a pre-loader and claimed that his seniority entitled him to her route, regardless of the fact that Ms. Skulski had worked at UPS for seventeen years while Mr. Rodriguez had worked for the employer for only six years. UPS and the union agree that under the collective agreement, distribution center seniority determines route selection. UPS contends that pursuant to the collective agreement, Ms. Skulski lost her distribution center seniority when she elected in February 1995 to remain in the distribution center where she previously worked instead of "following her work" to another distribution center. UPS awarded Ms. Skulski's route to Mr. Rodriguez, on the grounds that he had greater distribution center seniority than did Ms. Skulski and could, therefore, claim her route.

The union agrees that an employee who does not "follow her work" when a distribution center is closed loses her seniority. The union has nevertheless filed a grievance over Ms. Skulski's reduction in seniority because it contends that UPS did not comply with the contractual requirement that it give Ms. Skulski prior written notice of the closure of her distribution center and the conditions of her continued employment.

Article XIV, Section 2(b) requires protesters to file "within two (2) working days of the day when the protestor becomes aware or reasonably should have become aware of the action protested." The short time limits are important to ensuring that alleged violations of the **Rules** are quickly brought to the attention of the Election Officer in order to afford the greatest opportunity for applying an effective remedy if a violation is found.

This protest was filed on April 22, 1996. To be timely, the protester must have become aware, or reasonably should have become aware of the retaliatory acts no earlier than April 18, 1996, which was two working days before the date the protest was filed. The Election Officer finds that Ms. Skulski's should have been aware of the retaliatory act claimed in this protest on March 19, 1996, the date of her route change. The Election Officer further finds that the protester should have become aware of the allegedly retaliatory action taken by UPS prior to April 18, 1996.

Mr. Bruno states that he learned about the allegedly retaliatory actions by UPS and Local Union 396 in a conversation he had with Ms. Skulski in mid-April 1996. Ms. Skulski states that the conversation occurred sometime between April 11 and 15, 1996. Therefore, the Election Officer finds that Mr. Bruno had actual knowledge of the protested actions, as well as imputed knowledge, prior to April 18, 1996. The protests alleging retaliation by UPS and the local union are, therefore, untimely.¹

2. Allegation that the Local Union 396 President Threatened the Shop Steward

The protester alleges that Mr. Kikuchi warned Mr. Magnana not to support Ms. Skulski's grievance and that if he involved himself with the grievance he would be terminated. The protester alleges that these threats were motivated by an intent to retaliate against Ms. Skulski because of her support of the Members' Choice slate.

The Election Officer finds that in early April, prior to a meeting held between the local union and the employer to consider Ms. Skulski's grievance, Mr. Magnana had a conversation with Mr. Kikuchi in which the two disagreed as to whether pursuant to the collective bargaining agreement, an employee loses her seniority when she does not follow her work in the event her distribution center is closed. Referring to Ms. Skulski, Mr. Kikuchi said to Mr. Magnana angrily, using the words or words to the effect, "She is getting all of her information from Bruno. Anyone who helps her . . ." At that point, Mr. Kikuchi stopped and did not finish his sentence. He continued, "Five Bruno people have run against me and four have lost their jobs--who would protect you if there was no union and you got fired?"

Two days after their conversation, Mr. Kikuchi telephoned Mr. Magnana, and asked him who was giving Ms. Skulski "her information." Mr. Magnana responded that if anyone was responsible, it was him, referring to Mr. Magnana. Mr. Magnana told Mr. Kikuchi that he wanted to resign his post as shop steward because he felt he was in a "no-win situation." Mr. Kikuchi responded, "Do

¹The Election Officer is always concerned about allegations of retaliation and will, on certain occasions, review such cases on the merits despite a finding of untimeliness. The Election Officer finds this case does not warrant such treatment based on the facts reviewed above.

whatever you can, but just remember who will get you out of a jam if you need it." Mr. Magnana has not resigned his post as shop steward.

The Election Officer is unable to conclude that by these remarks, Mr. Kikuchi sought to undermine Ms. Skulski's attempt to recoup her seniority and that Mr. Kikuchi's alleged effort to sabotage her grievance was in retaliation for her opposition to the delegate slate led by a Local Union 396 officer. The conversations between Mr. Kikuchi and Mr. Magnana occurred in the context of a dispute over the meaning of the collective bargaining agreement with regard to seniority rights and whether the union allows partisanship to affect its decisions as to whether to represent a particular member. The Election Officer finds that in this context, Mr. Kikuchi's remarks are too ambiguous to be construed as a threat to harm Mr. Magnana and too attenuated to be construed as retaliation against Ms. Skulski.

Mr. Magnana admits that he does not know of any individuals who have been terminated because they opposed Mr. Kikuchi. The Election Officer further notes that Local Union 396 Secretary-Treasurer Lopez is pursuing a grievance on behalf of Ms. Skulski concerning her reduction in seniority. The matter will be presented in arbitration pursuant to the contractual grievance-arbitration procedure. The mere fact that the protester disagrees with the union's interpretation of the collective bargaining agreement does not establish retaliation.

Based on the foregoing, 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

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

Sincerely,

Danny Bruno
June 6, 1996
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Barbara Zack Quindel
Election Officer

cc: Kenneth Conboy, Election Appeals Master
Michael D. Four, Adjunct Regional Coordinator