

**OFFICE OF THE ELECTION ADMINISTRATOR  
for the  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS**

|                               |   |                               |
|-------------------------------|---|-------------------------------|
| <b>IN RE: FRANK HALSTEAD,</b> | ) | Protest Decision 2001 EAD 378 |
|                               | ) | Issued: May 31, 2001          |
| <b>Protestor.</b>             | ) | OEA Case No. PR052312WE       |
| _____                         | ) |                               |

Frank Halstead, a member of Local 572, filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2000-2001 IBT International Union Delegate and Officer Election ("*Rules*"). Halstead alleges that Local 396 secretary-treasurer Danny Bruno discriminated against Local 396 vice president Ernesto Perez in retaliation for Perez's decision to run in the local union's delegate election on a slate opposed to the slate that included Bruno.

Election Administrator representative Jason Weidenfeld investigated the protest.

**Findings of Fact**

The facts generally are not in dispute. Bruno's slate won Local 396's delegate election. On April 19, 2001, Perez sought permission to attend the IBT convention from June 27 to June 29. On May 3, Bruno denied the request in certified letter to Perez. Perez's wife signed for the letter on May 14, 2001. Perez had been on vacation in Oregon from May 1 to May 14 and read the letter the evening that he received it.

In the letter, Bruno reminds Perez that he declined the opportunity to join "the Local Union's slate" (i.e., Bruno's slate) and that the local had only a limited number of invitations to the convention. The letter concludes with Bruno advising Perez that, "[i]n the future you might want to remember your obligation as part of the Executive Board to support and back your Local."

In a conversation with our investigator, Bruno argues that the protest should be denied for two reasons. First, he argues that the protest is untimely because his letter to Perez was sent on May 3, while the protest was filed on May 23. Bruno does not deny that the return receipt for the letter was signed on May 14. Second, Bruno argues that Perez voluntarily decided to oppose the winning slate, and that since the members chose their representatives through an election, Perez should not be allowed to circumvent the will of the members by attending the convention as a guest.

Local 396 plans to send at least eighteen guests to the Convention, each of whom will spend two days attending the Convention in one of ten rooms reserved by the local union. Bruno states that the purpose of the guests' convention attendance is educational. The seven stewards and nine business agents who are scheduled to attend as guests have never been to an IBT convention, and Bruno states that the experience will provide first-

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hand knowledge of the workings of the convention. Perez, a local union vice president and executive board member, has also never attended an IBT convention. Perez would enjoy the same educational benefits of attending a convention as the others. However, Bruno states that had Perez won the delegate election, he would not have invited Bruno as a guest. As Bruno explained to our investigator, “we invited people who helped us out.”

Halstead has filed this protest based on Perez’s allegations. Halstead has little independent knowledge of the events giving rise to his protest. He asked Perez on May 21 whether he would attend the convention, and Perez explained Bruno’s reasons for denying his request. Two days later, Halstead filed this protest. Perez stated that he did not realize that a protest could be filed after the delegate election had concluded.

### **Analysis**

1. The *Rules* state that a member waives a protest by failing to file it “within two (2) working days of the day when the protestor becomes aware or reasonably should have become aware of the action protested.” Article XIII, Section 2(b). *Shifflett*, 2001 EAD 147 (February 8, 2001), *aff’d*, 01 EAM 34 (February 21, 2001). In *Shifflett*, the day after a snowstorm had prevented a member from attending the local union’s nomination meeting, he spoke with the third party who conducted the meeting. She informed the protestor to file a protest if he wanted to challenge the results of the meeting, but he did not do so for another week. We received the protest eight business days after the event that gave rise to it. In these circumstances, we found that the member had effectively waived his protest.

Here, seven working days transpired between the event that gave rise to the protest (Perez’s receipt of Bruno’s letter) and its filing. In addition to the fact that we received the protest more quickly than in *Shifflett*, the circumstances are different. Until he spoke with Halstead, Perez received no advice to file a protest and believed, incorrectly, that he had no such right because he had not been elected as a delegate. Although a close call, we find that the delay in filing this protest, under the described circumstances, is not sufficient cause to find that the protest is untimely. Instead, because of the importance of the issue presented here, and because the time limits established in the *Rules* are prudential, we will decide this protest on its merits.

2. Article VII, Section 11(f) of the *Rules* prohibits “retaliation or threat of retaliation by the International Union, any subordinate body, any member of the IBT, any employer or other person or entity against a Union member, officer or employee” when directed toward the exercise of any election-related right. *See Parisi*, P1095 (December 2, 1991). A protest claiming retaliation cannot be sustained unless a threat or an actual act of retaliation is established. *Giacumbo*, P100 (October 13, 1995), *aff’d*, 95 EAM 27 (October 25, 1995).

To demonstrate retaliation, a protester must show that conduct protected by the *Rules* was a motivating factor in the decision or the conduct in dispute. The Election Administrator will not find retaliation if he concludes that the same action would have been taken in the absence of the protected conduct. *See Gilmartin*, P32 (January 5, 1996), *Leal*, P51 (October 3, 1995), *aff'd*, 95 EAM 30 (October 30, 1995); *Wsol*, P95 (September 20, 1995), *aff'd*, 95 EAM 17 (October 10, 1995). *Cf.*, Wright Line, 251 NLRB 1083 (1980), *enf'd*, 662 F.2d 899 (1st Cir. 1981), *cert. denied*, 455 U.S. 989 (1982).

Also relevant to our analysis are the guidelines that the IBT has adopted concerning the attendance of guests at the IBT convention. These guidelines were discussed in our May 18, 2001 opinion letter based on those guidelines. We said there:

Locals can pay guest expenses only if the guest's attendance is reasonably related to the business of the convention. The IBT reiterated this in a TITAN message it issued yesterday to all local unions and added that any such payment must also be authorized in accordance with the local union's bylaws. ... Locals cannot pay guest expenses solely based on an individuals' status as a retiree, local union officer, business agent, steward, trustee, etc. Moreover, paying someone solely based on his or her status does not become acceptable simply by citing general "educational and informational reasons" for his or her attendance or by requiring that he or she attend the sessions. On the other hand, in certain circumstances it may be acceptable to pay a guest's expenses where his or her attendance is desired for specific educational purposes. This would be the case where, for example, a local seeks to educate new stewards in specific convention proceedings by sending them to the convention. In any case in which a guest has no designated responsibilities in connection with convention proceedings or its attendant union meetings, the local must make an individualized determination as to whether the guest's attendance is reasonably related to the business of the convention.

Office of the Election Administrator Website, Opinion Letters, May 18, 2001, Convention – guest expenses – attendance for educational reasons.

Thus, a local may decide who to send and who not to send to a convention based on legitimate educational concerns, including reasons such as the affirmative reasons cited by Local 396 secretary-treasurer Bruno here for sending the local's stewards and business agents. It may not select guests attending the convention at local union expense simply because they hold a particular status.

Bruno's refusal to send Perez here was based on Perez' status as an opponent of Bruno's slate in the local union's delegate election. Similarly, his selection of the guests who are to attend was also based in part on their status as supporters of Bruno in that election. As Bruno told our investigator, "we invited people who helped us out." Of

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course, Bruno cited additional and appropriate considerations for sending the selected guests, namely the specific educational benefits they would attain by attendance at the convention. But those reasons applied equally to Perez, an officer of the local, although he was not selected for attendance. Given this, and Bruno's candid admission that he selected supporters of his slate for attendance, we are left with no other alternative but to conclude that Perez was not invited to attend the convention as a guest simply because of his protected, albeit unsuccessful, delegate candidacy.

We accordingly find that Bruno's action as announced in his May 3 letter was improper retaliation against Perez for running against Bruno in the local union delegate election, in violation of Article VII, Section 11(g) of the *Rules*. Bruno emphasizes that Perez chose not to join the slate that eventually won the election and that the members did not choose Perez. These arguments miss the point. Whether to send a member to the IBT convention as a guest cannot hinge on the member's support of the winning slate. Local 396 will send business agents and stewards to the IBT convention to see it in person for the first time. Perez, a vice president and executive board member who has never seen such a convention, would clearly enjoy the same benefit from convention attendance. Local 396's selection of guests must be based on legitimate considerations of educational benefit to its officers, business agents and stewards. It may not base its decision on the partisan activities of such persons during the delegate election campaign period. For these reasons, we GRANT the protest.

### **Remedy**

When the Election Administrator determines that the *Rules* have been violated, he "may take whatever remedial action is appropriate." Article XIII, Section 4. In fashioning the appropriate remedy, the Election Administrator views the nature and seriousness of the violation as well as its potential for interfering with the election process.

To remedy Bruno's violation, we order Local 396 to permit Perez to attend the IBT convention for two consecutive days of his choosing on the same terms offered to all other guests of Local 396.

An order of the Election Administrator, unless otherwise stayed, takes immediate effect against a party found to be in violation of the *Rules*. *Lopez*, 96 EAM 73 (February 13, 1996).

Any interested party not satisfied with this determination may request a hearing before the Election Appeals Master within two (2) working days of receipt of this decision. The parties are reminded that, absent extraordinary circumstances, no party may rely upon evidence that was not presented to the Office of the Election Administrator in any such appeal. Requests for a hearing shall be made in writing, shall specify the basis for the appeal, and shall be served upon:

*Halstead*, 2001 EAD 378  
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Kenneth Conboy  
Election Appeals Master  
Latham & Watkins  
Suite 1000  
885 Third Avenue  
New York, New York 10022  
Fax: 212-751-4864

Copies of the request for hearing must be served upon all other parties, as well as upon the Election Administrator for the International Brotherhood of Teamsters, 727 15<sup>th</sup> Street NW, Tenth Floor, Washington, DC 20005 (facsimile: 202-454-1501), all within the time prescribed above. A copy of the protest must accompany the request for hearing.

*William A. Wertheimer, Jr.*

William A. Wertheimer, Jr.  
Election Administrator

cc: Kenneth Conboy  
2001 EAD 378

*Halstead*, 2001 EAD 378

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