

OFFICE OF THE ELECTION ADMINISTRATOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: ERNESTO PEREZ,) Protest Decision 2001 EAD 392
) Issued: June 20, 2001
Protestor.) OEA Case No. PR061912WE
)

Ernesto Perez, vice-president of Local 396, 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*”). He alleges that Local 396 secretary-treasurer Danny Bruno refused to certify to his employer, Waste Management of Chino, that he would require one week off work to attend the IBT convention as official union business.

Election Administrator representative Lisa Sonia Taylor investigated this protest.

Findings of Fact

On April 19, 2001, Perez sought the agreement to attend the IBT convention from June 27 to 29, 2001 on the same terms as afforded to certain other officials of the local. Bruno denied this request. Frank Halstead filed a protest on behalf of Perez claiming that Bruno discriminated against Perez in retaliation for Perez’s decision to oppose Bruno’s slate in the delegate election. In *Halstead*, 2001 EAD 378 (May 31, 2001), *aff’d*, 01 EAM 78 (June 15, 2001), we found that Bruno’s denial of this request violated the *Rules* and ordered him 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.”

On June 2, 2001, prior to his receipt of our decision, Perez requested in writing that the local send a letter to his employer requesting leave of absence for a week so that he may attend the convention. He stated that he made this request pursuant to the May 17, 2001 TITAN message from General President Hoffa which stated:

Time spent as a guest at the International Union Convention shall be considered as time spent on Union business. Therefore, upon written request of any prospective guest, the appropriate Union officer business agent, steward, etc. shall so certify to such prospective guest’s employer.

However, following our decision, the local sent a letter to Waste Management on June 1, 2001 requesting a leave of absence for Perez for June 27 and 28 only. Perez stated that he was surprised when his employer informed him that he had only two days leave of absence. He told his employer that he wished to have a week. His employer said that he needed to have the local submit a letter requesting the week. Perez contacted the local on June 18, 2001. Perez states that he told the local that he was not requesting

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that the local pay his expenses for more than the two days ordered in our prior decision, but that he wished to attend the convention for the other three days at his own expense. Bruno refused his request.

Bruno states that Local 396 guests would be required to work during their two-day stay at the convention. For this reason, he could not certify to Waste Management that Perez would be engaged in union business beyond the two days that he has already been treated as a guest. He added that Perez's employer has already expressed reservations regarding its ability to grant Perez's request for a week leave of absence. He stated that if he certified to Waste Management that Perez would be on official union business this would harm future relations with the employer.

Analysis

The question here is whether Bruno must certify to Waste Management that Perez's desired attendance on the three remaining days of convention week are for official union business. We conclude that he must. In *Halstead*, we dealt with the issue of the Local's obligation to pay Perez's expenses at the convention, and we ordered 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." *Halstead, supra*.

The question here is distinct from that decided in *Halstead*. Pursuant to General President Hoffa's May 17 Titan message, upon written request of any member intending to attend the convention as a guest, each local union must certify that such attendance is official union business. We have taken the same position *See Election Administrator Opinion Letter*, June 6, 2001. The effect of such certification is to trigger whatever union business leave provisions may exist under the collective bargaining agreement covering the member certified. Such certification does not require the local union to pay the member's expenses. Bruno's refusal to certify fails to follow the Titan message of General President Hoffa and our opinion letter following that message. For the foregoing reasons, we GRANT this protest.

Remedy

When the *Rules* have been violated, the Election Administrator "may take whatever remedial action is appropriate." Article XIII, Section 4. In fashioning the appropriate remedy, the Election Administrator considers the nature and seriousness of the violation, as well as its potential for interfering with the election process. Based on the foregoing, the Election Administrator orders Local 396 to immediately certify to Waste Management that Perez will attend the convention from June 25 to 29 on official union business.

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

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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:

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 15th Street, N.W., 10th Floor, Washington, D.C. 20005 (fax: 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
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