

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

IN RE: PAT NEFFERDORF,)	Protest Decision 2001 EAD 447
)	Issued: September 12, 2001
)	OEA Case No. PR082111ME
Protestor.)	
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Pat Nefferdorf, a member of Local 115, 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*”) against Kurtz-Hastings, Inc. (“KH”), an employer of IBT members. He alleges that KH Vice President Vic Frantz removed campaign material from a wall used for general purposes, in violation of Article VII, Section 11(d) of the *Rules*.

Election Administrator representative Lisa Sonia Taylor investigated the protest.

Findings of Fact and Analysis

On August 17, 2001, KH employee Nefferdorf was informed by Frantz that he was removing a flyer posted by Nefferdorf in an area that employees have generally been allowed to post materials. The area is on a wall near the time clock at KH’s Philadelphia facility. Nefferdorf says that he posted a flyer advertising a Leedham slate fundraiser on this wall, which Frantz removed because he believed it had “nothing to do with Local 115.” Nefferdorf also says that Frantz was evasive but eventually admitted that a local union steward told him to remove the flyer. Nefferdorf also says that other flyers remained posted on the wall, and only his was removed. He says that a locked union bulletin board is about 10 feet away from the time clock.

Frantz claimed that the flyer was not campaign related but rather advertised a local union bus trip to Atlantic City, although he admits that he did not “read it that hard.” Frantz claims that the “union stewards,” including Art Stefanowitz, approached him because they were concerned that Nefferdorf’s flyer was not a Local 115 flyer and should be removed. Frantz agreed that the wall is used for general purpose posting by employees, while all official union notices have to be posted on the adjacent local union bulletin board.

Nefferdorf provided a copy of the removed flyer. The heading at the top of the flyer reads: “Teamsters Casino Bus Trip.” Under a picture of a bus, money and dice, about half way down the page is a text box that gives the price, place and date and under which reads: “Fund Raiser For Tom Leedham.” Lower on the page, under the contact information, there is a disclaimer that reads: “The Leedham Campaign accepts contributions from current Teamster members only; Up to a limit of \$2,000 per member.”

Stefanowitz and fellow steward Neil McShane stated that the wall by the time clock has never been used for campaign materials. They stated that the wall is only used for

personal announcements, such as those regarding sickness and family deaths. However, each admitted that this is an “unwritten rule.” McShane stated that during his 14 years at KH, members have never been allowed to post campaign materials on the bulletin boards or the walls. The stewards stated that they acted on their own, without direction from the local union.¹ Each also stated that they thought that the flyer was inappropriate because it contained the word “Teamster” but was not a local union flyer. They said that they told Frantz that he should contact Mike, the person whose name was listed on the flyer, and ask him to remove it. Stefanowitz stated that the flyer remained on the wall for two days after this conversation with Frantz. Then, they asked Frantz for a second time to contact Mike and ask him to remove the poster. This apparently caused him to remove the flyer.

We GRANT the protest. The wall at KH adjacent to the time clock is used for general-purpose postings and may be used for campaign postings, even if that has not previously occurred. *McDonnell*, 2001 EAD 205 (March 1, 2001); *Cassella*, P794 (July 15, 1996).

Frantz’s removal of the literature violated the *Rules*, and the removal request made by Local 115’s stewards does not privilege his conduct. Rather, the stewards’ conduct also violates the *Rules* because they used their status as stewards to convince Frantz that the posting was inappropriate. Further, they acted within the scope of their apparent authority as stewards, and so their conduct is assignable to the local.

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 interference with the election process. To remedy this violation, we hereby order:

1. KH to cease and desist from removing campaign literature relating to the 2000-2001 IBT International Union officer election from the posting area that is the subject of this decision or from any other area where campaign literature may be posted pursuant to the *Rules*.

¹ Local 115 president Jim Smith stated that the local union was not responsible for the actions of the stewards. He added that Local 115 conducted both a delegate and local union officer election this year and members have never posted campaign materials on bulletin boards at KH. Local 115’s counsel argued that the stewards did not violate the *Rules* because they did not remove the campaign material but simply asked Frantz to have it removed. Even assuming that they violated the *Rules*, he argued, the local should not be held liable because stewards do not have the power to act on behalf of the union.

2. Local 115 and any of its agents to cease and desist from removing or facilitating the removal of posted campaign literature relating to the 2000-2001 IBT International Union Delegate and Officer Election.
3. Local 115 to post the attached Notice on its union board(s) at the KH Philadelphia facility for a period of thirty (30) days from the day of posting. Posting shall commence no later than September 18, 2001.
4. Local 115 to file an affidavit with the Election Administrator within two (2) days of said posting attesting to its compliance with this order, with a further affidavit to be filed attesting to the full posting required herein within two (2) days after the end of the posting period.

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:

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 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 447

NOTICE TO MEMBERS OF TEAMSTERS LOCAL 115

Under the Rules for the 2000-2001 IBT International Union Delegate and Officer Election ("*Rules*"), you have the right to participate in campaign activities for International officer candidates in the election to be held this year.

Under the *Rules*, you also have the right to post campaign material on bulletin boards if those bulletin boards and posting areas where employees have been permitted to post materials such as personal announcements. Any removal or defacement of campaign literature properly posted on these bulletin boards by any person is a serious violation of the *Rules*.

The Election Administrator has found that management, at the request of Local 115 stewards, have removed properly posted campaign materials from the area adjacent to the time clock at Kurtz-Hasting's Philadelphia facility. The Election Administrator has directed Kurtz-Hasting's and Local 115 and its stewards to cease and desist from any removal of campaign materials from that area.

Any protest you may have regarding your rights to engage in campaign activities or interference with those rights under the *Rules* should be filed with the Election Administrator within the time period prescribed by the *Rules*.

William A. Wertheimer, Jr.

William A. Wertheimer, Jr.
Election Administrator

This is an official notice from the Election Administrator for the International Brotherhood of Teamsters and must remain posted for 30 consecutive days from the day of posting, and must not be altered, defaced or covered by any other material.

Nefferdorf, 2001 EAD 447
September 12, 2001

DISTRIBUTION LIST VIA UPS NEXT DAY AIR:

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Washington, DC 20001

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Raymond, Ferrara & Feldman
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IBT Local 115
2833 Cottman Ave.
Philadelphia, PA 19149

J. Douglas Korney
Korney & Heldt
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Kurtz-Hastings, Inc.
Attn: D. Shipman & V. Frantz
10901 Dutton Road
Philadelphia, PA 19154

Barbara Harvey
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Todd Thompson
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