

October 14, 1996

VIA UPS OVERNIGHT

Joseph G. Detenber
11706 Robindale Road
Louisville, KY 40243

Wes Monhollen, Distribution Manager
Kroger Company
2000 Nelson Miller Parkway
Louisville, KY 40223

Re: Election Office Case No. P-1032-LU89-SCE

Gentlemen:

Joseph G. Detenber, a member of Local Union 89, filed a pre-election protest pursuant to Article XIV, Section 2(b) of the *Rules for the IBT International Union Delegate and Officer Election ("Rules")* alleging that Kroger Distribution Manager Wes Monhollen removed campaign literature from a union bulletin board on the employer's premises. In addition, Mr. Detenber states that Mr. Monhollen threatened to fire Mr. Detenber for reporting the alleged violation to Mr. Detenber's local union steward.

The employer admits that it removed campaign material from the bulletin board, stating that under company policy and the collective bargaining agreement, no campaign materials are allowed on local union bulletin boards. The employer adds that Mr. Monhollen's threat to fire Mr. Detenber was work-related and not related to the International officer election.

Adjunct Regional Coordinator Joe F. Childers investigated this protest.

The investigation revealed that on September 26, 1996, Mr. Detenber saw

Mr. Monhollen taking down campaign literature from the local union bulletin board and throwing it away. Mr. Detenber found Local Union 89 Steward Keith Davis on the warehouse floor and told him what had happened. As they were talking, they saw Mr. Monhollen pass by on his scooter. They flagged him down and asked him whether he had taken down the literature. Mr. Monhollen stated that he had indeed taken it down but that it was company policy not to allow campaign literature on bulletin boards. Mr. Detenber alleges that Mr. Monhollen told them “he didn’t care who was running and didn’t know who was running and that, again, there will be no campaign literature on the bulletin board.”

Mr. Detenber returned to his work, and Messrs. Davis and Monhollen continued the discussion. At the end of the conversation, Mr. Monhollen told Mr. Davis that if he ever caught Mr. Detenber “walking off the job” again, that he would fire him. Mr. Davis asked Mr. Monhollen what he meant by “walking off the job,” and Mr. Monhollen replied that he meant “leaving his work area.” Mr. Monhollen states that by “getting off his equipment,” walking up the aisle, and talking to Keith Davis during work hours, Mr. Detenber had left his work area.

The investigation revealed that Mr. Monhollen and Mr. Detenber have a history of disagreements. Mr. Monhollen fired Mr. Detenber last year after an incident involving some anonymous graffiti. Mr. Detenber was reinstated after being off work for two months subsequent to a third step hearing. Ever since this incident, the relationship between the two men has been “bitter.”

The information was posted on the local union bulletin board. This bulletin board has been utilized solely for official union business postings and notices required by the Election Officer. Employees have not been permitted to make general purpose postings on this board. Mr. Davis states that he has removed campaign materials from the local union bulletin board and other areas several times.

None of the witnesses interviewed had knowledge of campaign literature postings being allowed in the past and confirmed that any campaign literature which was posted has immediately been removed. The investigation revealed that the warehouse was not in existence during the last International election.

1. The Alleged Removal of Campaign Materials

Article VIII, Section 11(d) of the *Rules* states that “[n]o restrictions shall be placed upon candidates’ or members’ preexisting rights to use employer or Union bulletin boards for campaign publicity.” Upon investigation, the Election Officer finds that there is no pre-existing right to post campaign literature on the union bulletin board at the Kroger warehouse in Louisville, Kentucky.

The collective bargaining agreement in effect at the Kroger warehouse states that “[t]he Employer shall make available bulletin boards for the posting of Union notices, provided that copies

of such notices are first presented to the Distribution Manager and if notice is official Union notice and reasonable (sic) responsible posting, same will be approved.”

Mr. Monhollen, as distribution manager, states that he has removed campaign literature in the past. The investigation corroborates his statement. The Election Officer finds that Mr. Monhollen did not violate the *Rules* when he removed the campaign material from the local union bulletin board.

2. The Allegation of Employer Retaliation

Article VIII, Section 11(f) of the *Rules* states that “[r]etaliation or threat of retaliation by . . . any employer or other person or entity against a Union member, officer or employee for exercising any right guaranteed by this or any other Article of the *Rules* is prohibited.”

The investigation revealed that the relationship between Messrs. Monhollen and Detenber was hostile prior to this incident. Mr. Monhollen told the Adjunct Regional Coordinator that he had no problem with Mr. Detenber’s discussion of union matters with his union steward, but that he could not do it on company time. Mr. Monhollen pointed out that he had caught Mr. Detenber on an earlier occasion reading a newspaper during work hours. Based upon the investigation, the Election Officer finds that Mr. Monhollen would have taken the same action for Mr. Detenber being outside of his work area even if the action had not been related to a discussion regarding campaign postings on the bulletin board. Therefore, the “warning” given to Mr. Detenber was work-related and did not have to do with the International officer election.

For the foregoing reasons, this 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

Joseph Detenber
October 14, 1996
Page 4

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,

Barbara Zack Quindel
Election Officer

cc: Kenneth Conboy, Election Appeals Master
Joe F. Childers, Adjunct Regional Coordinator