

April 8, 1996

VIA UPS OVERNIGHT

Robert Germann  
4211 E. Overlook Drive  
San Diego, CA 92115

Pre-Mixed Concrete Company  
7220 Trade Street, Suite 300  
San Diego, CA 92121

H. G. Fenton Companies  
7220 Trade Street, Suite 300  
San Diego, CA 92121

Re: Election Office Case No. P-682-LU36-CLA

Gentlemen:

This protest was filed pursuant to Article XIV, Section 2(b) of the *Rules for the 1995-1996 IBT International Union Delegate and Officer Election* (“*Rules*”) by Robert Germann, a member of Local Union 36. The protester alleges that he was denied access to an employer work site, in violation of the *Rules*. He also alleges that the opposition slate of candidates has had access to the employer’s premises.

Paul Smith, a manager with H. G. Fenton Materials Co./Pre-Mixed Concrete Co., responds that he refused Mr. Germann access because he had to consult the employer’s general counsel about the matter. Mr. Smith states that Mr. Germann never contacted him to learn the results of this consultation.

The protest was investigated by Adjunct Regional Coordinator Jan Stiglitz.

Article VIII, Section 11(e) of the *Rules* states, in relevant part:

Subject to the limitations in this Subsection, (I) a candidate for delegate or alternate delegate and any member of the candidate’s

Robert Germann

April 8, 1996

Page 2

Local Union may distribute literature and/or otherwise solicit support in connection with such candidacy in any parking lot used by that Local Union's members to park their vehicles in connection with their employment; (ii) each member of a candidate's Local Union has the reciprocal right to receive such literature and/or solicitation of support from such candidate or candidate's advocate . . .

This section creates a limited right of access to IBT members and candidates to distribute literature and seek support for their campaign in any parking lot used by union members to park their vehicles in connection with their employment. While "presumptively available," this right is not without limitations. It is not available to any employee on working time, and candidates and their supporters cannot solicit or campaign to employees who are on working time. It is also restricted to campaigning that will not materially interfere with an employer's normal business activities. See Eby, P-575-LU560-MOI (March 11, 1996), aff'd, 96 - Elec. App. - 131 (KC) (March 19, 1996).

The investigation revealed that, on March 18, 1996, Mr. Germann, after receiving a report that a member had been denied access to the employer's property to campaign, went to the employer to request permission to distribute campaign materials on company property. He spoke with Mr. Smith who denied him immediate access but told Mr. Germann that he would check into the matter. Mr. Germann returned to the work site the next day but was again denied access. Mr. Germann states that he made efforts to contact Mr. Smith and the employer's counsel, but neither responded.

Mr. Smith states that Mr. Germann made no subsequent attempt to gain access to the property after his initial refusal. Mr. Smith concedes, however, that he was out of the office for the balance of that week and had no direct knowledge of Mr. Germann's subsequent efforts.

After the protest was filed, Mr. Stiglitz attempted to resolve the access issue with Mr. Smith.<sup>1</sup> Further, prior to issuing the decision, the Election Office attempted to reach Mr. Smith and left a message for him. Despite these attempts, the matter was not resolved and it is not disputed that Mr. Germann was prevented from campaigning on the premises. There is no evidence that the opposition slate has been permitted parking lot access.

As a result, the protest is GRANTED as to the denial of access by the employer.

When the Election Officer finds the *Rules* have been violated, she "may take whatever remedial action is appropriate." Article XIV, Section 4. In fashioning the appropriate remedy, the Election Officer views the seriousness of the violation, as well as its potential for interfering with the election process.

---

<sup>1</sup>Mr. Smith also referred Mr. Stiglitz to the employer's general counsel but advised him that the general counsel would be out of the country for a month.

Robert Germann  
April 8, 1996  
Page 3

In these circumstances, the Election Officer directs the employer to immediately grant access rights to non-employee IBT members for campaign purposes to the parking lot used by local union members. Such members shall announce their presence and purpose to an agent of the employer and provide identification, if requested.

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 North Capitol Street, Suite 855, Washington, D.C. 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  
Dolly Gee, Regional Coordinator  
Jan Stiglitz, Adjunct Regional Coordinator