

May 10, 1996

VIA UPS OVERNIGHT

Phil Mastroianni
42 Gillespie Road
Bloomfield, NJ 07003

Robert J. Rabbitt, Jr.
13 Rolling Ridge Drive
Warwick, NY 10990

Walter Talt
28 Karen Road
Highland Lakes, NJ 07422

Richie Powers
Jacob Javits Convention Center
655 W. 34th Street
New York, NY 10001

Craig H. Livingston
108 Washington Street
Newark, NJ 07102

Re: Election Office Case No. P-710-LU807-NYC

Gentlemen:

A pre-election 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 Phil Mastroianni, Robert Rabbitt, Jr. and Walter Talt, candidates for Local Union 807 delegate on the Freedom Team slate. The protesters allege that they were denied access to the Jacob Javits Convention Center (JJCC) and threatened with arrest by a JJCC security guard when they attempted to campaign on the premises. The protesters also allege that other Local Union 807 delegate candidates have been given access to the JJCC premises for campaign purposes and, thus, they have been denied equal access. The Election Officer deferred the protest for post-election consideration, pursuant to Article XIV, Section 2(f)(2) of the *Rules*.

In response, the JJCC states that no parking lot is available for employee use, and that the protesters were distributing literature in a work area during work time. The JJCC states that access to its employees is available at the 34th Street and 11th Avenue entrances where the employees enter and exit.

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This protest was investigated by New York City Protest Coordinator Barbara Deinhardt.

On the morning of April 2, 1996, the protesters drove to the 39th Street side of the JJCC for the purpose of distributing campaign literature. JJCC employees use this side of the building to refuel trucks. Several trucks were on JJCC property either refueling, waiting to refuel or moving from the second floor of a JJCC operated parking lot to refuel. This is a work area, not an employee parking lot. Several trucks were also lined up outside JJCC property either on the public street waiting to pass a guard or on the entrance drive leading to the ramp. The protesters approached the trucks to distribute literature. It is undisputed that the employees in the trucks were working at the time the protesters distributed campaign literature.

Upon entering JJCC's property, the protesters spoke to two JJCC security guards, Curtis Goods and Robby Condon, who inquired as to the protesters' activities. According to the protesters, after a short discussion, one of the security guards stated, "You must leave this premises. If you continue to hand out your literature, you will be arrested by the New York State police." The protesters left the premises.

Article VIII, Section 11(e) of the *Rules* 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.

Here, it is undisputed that the protesters sought to campaign on the employer's premises during work hours. Moreover, the protesters campaigned on a portion of the JJCC property which is not accessible to candidates under the *Rules*.

Article VIII, Section 11(f) of the **Rules** prohibits retaliation and the threat of retaliation by any person against a member for exercising any right guaranteed by the **Rules**.

The protesters were not threatened for exercising a right guaranteed by the **Rules**. In ordering the protesters to leave, the JJCC was acting to protect its operational and security interests in the community center. General Counsel Elizabeth Bradford advises that the JJCC will permit all candidates to distribute literature outside of the 34th Street and 11th Avenue entrances even though they are on company property, so long as the center's operations are not disturbed.

The Election Officer is satisfied that the protesters would have had an equal opportunity to engage in campaign activities at the 34th Street and 11th Avenue entrances if they had so requested.

The protesters also allege that other delegate candidates have distributed campaign literature and stickers inside the JJCC. Thus, they contend that they were denied equal access in violation of the **Rules**. One witness, George Gulley, a member of Local Union 807, states that he has seen campaign literature posted at the JJCC on behalf of the New Start Coalition, an opposing slate of delegate candidates. Mr. Gulley did not see who posted the literature in question.

Article XIV, Section 1 of the **Rules** places the burden on the complainants "to present evidence that a violation has occurred." Further, the Election Appeals Master has stated that the protester bears the initial burden of proof to offer evidence substantiating his allegations. In Re: Chentnik, 95 - Elec. App. - 52 (KC) (January 10, 1996).

The Election Officer concludes that the protesters have not presented sufficient evidence to satisfy the initial showing required by Article XIV, Section 1 of the **Rules**. Mr. Gulley's account establishes only that campaign materials have appeared inside the facility. It does not establish that a candidate or anyone acting on behalf of a candidate distributed campaign materials inside the employer's facility to employees who were on work time. There is no evidence that any person has been disparately treated in regards to access.

The JJCC did not violate the **Rules** when it restricted the protesters' access to its premises. There is no evidence of disparate treatment of candidates.

In consideration of the foregoing, 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:

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Kenneth Conboy, Esq.
Latham & Watkins
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New York, NY 10022
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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
Barbara Deinhardt, New York City Protest Coordinator