

April 25, 1996

VIA UPS OVERNIGHT

Terry Maxwell
265 Schrop Street
Akron, OH 44312

Preston Trucking Company
2977 Brecksville Road
Richfield, OH 44286

Re: Election Office Case No. P-731-LU24-CLE

Gentlemen:

A pre-election protest was filed pursuant to Article XIV, Section 2(b) of the *Rules for the IBT International Union Delegate and Officer Election ("Rules")* by Terry Maxwell, a member of Local Union 24 and candidate for alternate delegate on the Teamsters slate. Mr. Maxwell alleges that his employer, Preston Trucking Company ("Preston"), violated the *Rules* by removing campaign literature that Mr. Maxwell had placed on windshields of vehicles in Preston's employee parking lot. Mr. Preston also states that "the company action may have occurred in collusion with officers of Local 24 supporting the opposition slate."

This protest was investigated by Regional Coordinator Joyce Goldstein.

Mr. Maxwell asserts that he put campaign flyers on vehicle windshields in the Preston parking lot on April 10, 1996, between 8:30 and 11:00 p.m. He alleges that Preston removed the flyers within the next several hours. He does not claim that Preston restricted his access to the parking lot for face-to-face campaigning.

Article VIII, Section 11(e) provides, in pertinent part:

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

The purpose of this section is to ensure that candidates and members have an effective method of communicating with other members about the International union delegate and officer election. This purpose is satisfied by the face-to-face opportunities for campaigning and handbilling that the parking lot rule affords. The limited right created and protected by this section does not extend to placing campaign material on vehicle windshields. Howe, P-1083-LU238-MOI (November 14, 1991).

Mr. Maxwell also claims the protection of Article VIII, Section 11(d) of the *Rules*, which provides:

[N]o restrictions shall be placed upon candidates' or members' preexisting rights to solicit support, distribute leaflets or literature, conduct campaign rallies, hold fund-raising events or engage in similar activities on employer or Union premises. Such facilities and opportunities shall be made available to all candidates and members on a nondiscriminatory basis.

By its terms, this section protects “preexisting rights” to campaign on employer or union premises, which must be honored on a nondiscriminatory basis in the International union delegate and officer election. There is no evidence on this record, however, that Preston has ever permitted the placing of campaign literature on vehicle windshields. Local Union 24 President Jake Adams states that the company has had a consistent policy of limiting all campaigning, unless otherwise required by the *Rules*.

The Election Officer notes that Mr. Maxwell presented no evidence that it was Preston that removed his campaign literature from windshields. However, the foregoing discussion demonstrates that Mr. Maxwell’s allegation, even if true, does not constitute a violation of the *Rules*. As the Election Officer stated in Howe:

. . . the Election Officer concludes that the prohibition on placing campaign literature under the windshield wipers of parked cars is not violative of the Election Rules given the other means of communication available to campaigners, i.e., to personally hand out literature to employees as they walk into the facility, and the lack of any evidence that [the employer] has permitted other literature, campaign or otherwise, to be placed under the windshield wipers of cars parked in its parking lot.

In view of the finding that Mr. Maxwell did not engage in protected activity when he placed campaign material on vehicle windshields, it is unnecessary to address his additional allegation that the local union may have colluded with Preston in its removal. In any event, Mr. Preston presented no evidence on this issue, and the Election Officer’s investigation did not reveal any.

For the reasons stated above, the 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

Terry Maxwell
April 25, 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
Joyce Goldstein, Regional Coordinator