

August 6, 1996

VIA UPS OVERNIGHT

Clifford Batham
15551 Lemarsh Street
Mission Hills, CA 91345

John T. Stephens, Corporate Counsel
Price Costco
4455 Mornea Boulevard
San Diego, CA 92117

Mark Spedding, Manager of
Labor Relations
Price Costco
999 Lake Drive
Issaquah, WA 98027

Re: Election Office Case No. P-846-LU986-CLA

Gentlemen:

Clifford Batham, a member of Local Union 986, filed a pre-election protest pursuant to Article XIV, Section 2(b) of the *Rules for the 1995-1996 IBT International Union Delegate and Officer Election ("Rules")* against his employer, Price Costco in Burbank, California. The protester alleges that Price Costco has violated the *Rules* by prohibiting employees at its Burbank facility from wearing campaign buttons and shirts, despite having previously permitted these employees to wear such items.

Price Costco responds that its official policy prohibits employees from engaging in campaign activity on the shop floor. Under the Price Costco dress code guidelines, it states, "Pictures or writing on shirt/blouse must be conservative and not contain political or controversial subject matter." Price Costco also relies on its collective bargaining agreement with the local union, which provides that "union members shall have the right to wear their official union buttons." The employer contends that this language shows that the parties intended to permit employees to wear only buttons bearing the Teamster logo, as opposed to buttons with campaign insignia.

Regional Coordinator Dolly M. Gee investigated the protest.

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Under the dress code, the employer states as follows with regard to shirts:

Shirts/Blouses

- No T-shirts
- Ladies: professional blouses or tops with sleeves (no T-shirts)
- Men: professional shirts (no T-shirts)
- Must be tucked into pants or shorts.
- Sweatshirts and sweaters worn over a collard (sic) shirt, turtlenecks are acceptable. (solids and patterns preferred)
- Pictures or writing on shirt/blouse must be conservative and not contain political or controversial subject matter.
- No competitor names/logos.
- Price Costco logo shirts, with collar are permitted. (no T-shirts)

In a memorandum to employees issued on April 1, 1996, to the employees at its Burbank operation, the employer stated, in pertinent part:

No sleeveless shirts are permitted. All employees must wear regular short sleeve or full sleeve shirts at all times. T-shirts and large logos are not allowed. This still seems to be a problem - please do not wear them.

Regular collared, Henley style, and professional blouses are permitted.

Price Costco regularly permits employees to wear polo shirts with a large Teamster logo and the local union number. Beneath the local union number the shirt reads "Price Club."

The evidence established that Price Costco permitted employees at its Burbank facility to wear buttons and shirts containing campaign emblems during the 1991 IBT election. Thus, the protester states that in 1991, several of the employees at the Burbank store wore campaign shirts and buttons

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without any problem. Dave Bills, a service clerk in the refunds department at the Burbank location, stated that in 1991 employees were permitted to wear buttons and collared polo shirts with Ron Carey logos. Brent Harknett, a service clerk and cashier at Burbank, and John Knox, a cashier at Burbank, both stated that they wore Carey buttons and observed other employees with Carey shirts during the 1991 election. Messrs. Harknett and Knox both state that during this election period they wore Hoffa buttons and were told by their supervisor not to do so. Scott Schruher, a supervisor at the employer's Burbank facility, directed employees there not to wear campaign buttons and shirts supporting the campaign of James P. Hoffa, telling the employees that customers might find such display "offensive." Price Costco currently permits employees at its Moreno Valley facility to wear campaign buttons and employees at its Alhambra facility to wear campaign polo shirts and buttons. The same collective bargaining agreement in force at Burbank applies to these locations.

The protester presented copies of the Hoffa emblem on polo shirts which demonstrate that the emblem is no larger than on the Teamster logo shirts now permitted by Price Costco. Copies of Carey and Hoffa buttons that are circulating in the warehouse were also presented. Both buttons are about 1 to 1 ½ inches in diameter.

In the *Advisory on Wearing of Campaign Buttons and Other Emblems ("Advisory")*, the Election Officer stated as follows:

The **Rules** at Article VIII, Section 11(d) also provide that "no 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." Among the rights so protected by the **Rules** is the right of IBT members to wear campaign emblems on buttons, t-shirts or hats while working . . .

However, a member's right to wear campaign emblems, including buttons, t-shirts and hats, while on work time may be circumscribed by the member's employer or the public at large. The employer may prevent the wearing of campaign emblems only where the prohibition is necessary to maintain production and discipline, safety, or preventing the alienation of customers. The basis for these limited exceptions is the right of the employer to prevent unrelated third parties from inappropriately assuming that the employer supports the political or campaign position advocated by the employee or the employee's emblem . . .

As set forth in the *Advisory*, the Election Officer recognizes that employers with employees who deal with the public may fall within the exception of the members' pre-existing rights to wear campaign emblems. In this case, however, Price Costco permitted employees to wear shirts and buttons during the 1991 election, and continues to permit employees to wear shirts and buttons at other locations. One source of "preexisting rights" for purposes of this section is past practice. Brinkmann, P-151-LU305-PNW (September 18, 1995), aff'd, 95 - Elec. App. - 21 (KC) (October 10, 1995); In Re: Hall, 90 - Elec. App. - 1 (October 4, 1990). The existence of a contrary rule does not change this result if a different practice has grown up in the face of it. Blake, P-953-LU848-CLA (October 30, 1991) (finding "de jure restricted union bulletin board may have been transformed through past practice into a de facto general purpose bulletin board"). The Election Officer finds that there is a past practice permitting Price Costco employees at the Burbank facility to wear campaign buttons and shirts. Where there is a pre-existing right, Article VIII, Section 11(d) of the **Rules** specifically protects it. Therefore, the right may not be modified or reduced during the election process. Jesses, P-183-LU612-SEC (February 5, 1991) (concluding "the employer cannot now change its practice" with respect to parking lot access). See also Camarata, P-709-LU299-MGN (April 10, 1991); Benson, P-431-LU104-RMT (February 19, 1991). Although the employer professes that the display of campaign emblems on employee clothing is strictly prohibited, it has tolerated and continues to tolerate the display of such emblems. Thus, the right to wear campaign buttons and shirts previously enjoyed by Price Costco employees at the Burbank warehouse must be recognized for supporters of any candidate for International office in the upcoming election.

Accordingly, the protest is GRANTED.

When the **Rules** have been violated, "the Election Officer may take whatever remedial action is appropriate." Article XIV, Section 4. To remedy this violation, the Election Officer hereby orders Price Costco to cease and desist from prohibiting employees at its Burbank facility to wear campaign buttons and shirts relating to the 1996 IBT International Officer Election. In addition, within seven (7) days of this decision, Price Costco is ordered to post the enclosed Notice, signed by Mr. Schruher, the assistant manager of its Burbank facility, on all union bulletin boards at the Burbank facility for a thirty-day (30) period. Within two (2) days of posting the attached note, Price Costco shall file an affidavit with the Election Officer setting forth the steps it has taken to comply with this decision and order.

An order of the Election Officer, unless otherwise stayed, takes immediate effect against a party found to be in violation of the **Rules**. In Re: Lopez, 96 - Elec. App. - 73 (KC) (February 13, 1966).

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,

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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 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
Dolly M. Gee, Regional Coordinator

NOTICE TO TEAMSTER MEMBERS EMPLOYED BY PRICE COSTCO

You have the right to participate in campaign activities on behalf of candidates campaigning to become International officers of the IBT in the 1996 election.

You have the right to wear campaign buttons and shirts supporting any International officer candidate in the IBT election while you are at work.

No company official may prohibit you from engaging in the above-described campaign activity.

Price Costco will not interfere with your right to wear campaign buttons and shirts.

You do not have the right to engage in any conduct which reduces production, decreases discipline, is unsafe or in any way interrupts the business of Price Costco.

Scott Schruber, Assistant Manager
Price Costco, Burbank Warehouse

This is an official notice 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.

Prepared and approved by Barbara Zack Quindel, Election Officer, IBT.