

*September 20, 1996*

***VIA UPS OVERNIGHT***

***John Cetinske  
117 Peak Hill Circle  
Nashville, TN 37211***

***Harold J. Yates, President  
Teamsters Local Union 120  
953 Westgate Drive #115  
St. Paul, MN 55114***

***Steve Swarthout, Terminal Manager  
Roadway Express  
Terminal 434  
3240 Franklin Limestone Road  
Antioch, TN 37013***

***Richard Bennett  
Roadway Services, Inc.  
1077 George Boulevard  
Akron, OH 44309***

***Mark Heining, Asst. Terminal Manager  
Roadway Express  
2950 Lone Oak Circle  
Eagan, MN 55121***

***Barbara J. Leukart  
Jones, Day, Reavis & Pogue  
North Point, 901 Lakeside Avenue  
Cleveland, OH 44144***

***Bradley T. Raymond  
Finkel, Whitefield, Selik, Raymond,  
Ferrara & Feldman, P.C.  
32300 Northwestern Highway, Suite 200  
Farmington Hills, MI 48334***

***Re: Election Office Case Nos. P-886-LU480-SCE  
P-905-LU120-NCE***

***Gentlepersons:***

***John Cetinske (P-886-LU480-SCE), a member of Local Union 480, and Harold J. Yates (P-905-LU120-NCE), president of Local Union 120, filed pre-election protests pursuant to Article XIV, Section 2(b) of the Rules for the IBT International Union Delegate and Officer Election ("Rules"). Both protesters allege that Roadway Express ("Roadway") has violated their rights to campaign in employee parking lots on employer premises, as guaranteed by the Rules. Because these protests involve similar allegations and parties, they were consolidated for decision by the Election Officer.***

*The employer responds that it has issued and will enforce written rules governing access to its employee parking lots, which it states are necessary to its business and consistent with the Rules.*

*Regional Coordinators Judith E. Kuhn and Bruce Boyens investigated these protests.*

*On August 9, 1996, Mr. Cetinske, attempted to campaign at Roadway's parking lot in Antioch, Tennessee, with Randall Copeland, a Southern Region vice-presidential candidate. On August 20, 1996, Mr. Cetinske, along with Mr. Copeland and James P. Hoffa, candidate for general president, attempted to campaign at that parking lot again. Both times they were approached by Roadway management and told that since they did not provide the employer with 24 hours' written notice of their intention to campaign, they had to leave the premises.*

*Mr. Yates alleges that he was informed of Roadway's promulgation of rules limiting access to their parking lots on a national basis by a local union member who was asked to leave Roadway's parking lot in Eagan, Minnesota, when he attempted to campaign. Mr. Yates further alleges that he spoke to Roadway management and that they informed him that the new rules applied to the International and local union elections.*

*The rules issued by Roadway list eight separate restrictions on campaigning on employer premises, including parking lots:*

#### ***IBT ELECTION CAMPAIGNING GUIDELINES***

- 1. Candidates and/or their supporters are required to provide 24-hour advance notice.*
- 2. The entire group should not exceed 4 campaigners.*
- 3. Campaigning should be restricted to within a 25 foot radius of employee entrances of the parking lot.*
- 4. Visits should be limited to 2 hours or only so long as there are significant numbers of employees flowing through the campaign area, whichever is shorter.*
- 5. Requests for access will be treated on first-come, first-served basis. Access will be limited to one slate of candidates at a time.*
- 6. Candidates and/or supporters shall remove all undistributed campaign materials and all other campaign paraphernalia when they depart the premises. Appropriate postings will be allowed on the bulletin board.*
- 7. Express employees shall have the right to solicit on non-work time only. Express employees shall have the right to distribute campaign material in non-work areas during non-work*

*time in accordance with the rules of number 6 above. Express employees who are not in contact with customers of the employer shall have the right to wear campaign buttons, hats, etc. provided they are in good taste.*

*8. Candidates and/or supporters failing to make a proper request may be denied access. Candidates and/or supporters permitted access who fail to abide by the provisions above may be required to leave the premises.*

*After receipt of these protests, counsel for Roadway was contacted by Benetta Mansfield, Chief of the Protest Division. Counsel confirmed that these guidelines apply to the International officer election and to all of its facilities. Counsel also stated that the guidelines would be enforced on a nationwide basis without modification or exception. Counsel further stated that Roadway "developed the guidelines following extensive negotiations with the Election Officer at the time of the last election" and that the guidelines for this election are identical to the guidelines previously used. Counsel further stated that the current Election Officer was well aware that Roadway was operating under the announced procedures.*

*1. History of Roadway Negotiations with Election Officer Michael Holland*

*The investigation revealed that during the 1991 election cycle, in an attempt to resolve access issues at all Roadway facilities, Mr. Holland sent a proposal to Roadway dated October 11, 1991. The proposal read, in pertinent part:*

*11. IBT members, not employed by Express or by the particular Express facility, who are supporters and/or candidates for delegate or International Officer positions shall be allowed access to Express facilities in accordance with the following:*

*a. Candidates and/or their supporters seeking access shall contact the particular Express facility manager prior to the time for which access is sought, identifying themselves (and providing a telephone number where they can be reached) and indicating the candidate(s) or slates on whose behalf campaign access is being sought, the number of campaigners expected and the nature of the campaign activities being conducted. Express may impose reasonable limitations on the number of campaigners permitted to be present at any one time.*

*b. Access will be permitted as designated by Express management provided such access permits face to face campaigning by candidates and their supporters with IBT members employed by Express in areas such as employee/visitor parking lots. Where there is no exterior, outdoor lighting, Express may limit access to daytime hours.*

- c. Candidates and/or their supporters shall comply with existing Express rules such as prohibitions against drugs, alcohol, weapons, threats, violence and property damage. Microphones or megaphones shall not be utilized for campaign purposes. Candidates and/or their supporters shall remove all undistributed campaign materials and all other campaign paraphernalia such as tables, signs, etc. when they depart the premises.*
- d. Candidates and/or their supporters failing to make proper request may be denied access. Candidates and/or their supporters permitted access who fail to abide by the provisions of this paragraph 11 may be required to leave the premises. . .*

*On October 17, 1991, Richard J. Bennett, counsel for Roadway responded to Mr. Holland's proposal, in pertinent part, as follows:*

*First, we assume that the word "prior" in paragraph 11.a incorporates the concept of the individual providing reasonable prior notice of the request for access. Access cannot be guaranteed if those seeking entry give abbreviated notice of their intentions. While Roadway will endeavor to accommodate all requests that are consistent with these rules, it will be much easier to accomplish if the prior notice is sufficiently in advance of the requested access period.*

*Second, Roadway understands that this agreement does not prohibit from establishing, when necessary, reasonable time limitations for campaigning by non-employees on its property. For example, there may be occasions where it is necessary to establish such limitations because of competing demands for limited space at the same approximate times, or when a candidate or his/her supporters seek to remain on the property after employees have already left the site of the campaign activity.*

*In addition, we assume that the reference in the second paragraph of your letter that the agreement does not take away existing rights that might be greater because of prior actions of Roadway, differentiates between employees and non-employees. Employees, by operation of law, have greater rights than non-employees, and we do not read this agreement as changing the respective status of either group.*

*During the investigation of these protests, Mr. Holland was contacted regarding whether a written agreement with Roadway was ever reached during the 1991 election. Mr. Holland responded:*

*Upon receipt of the October 17, 1991 Roadway letter and after discussion with counsel, I specifically determined not to respond further to Roadway's assumption and understanding as outlined*

*in that correspondence, but rather to rely on the substantial, significant and clear agreements that we had made with respect to campaigning access covering all those subjects other than prior notice, and time limitations. My view then was that given the broad agreement that we without question had with respect to most campaigning access issues that those upon which we did not have clear agreement could be resolved--if they were implicated in any protest matters--on a cases by case basis.*

*It is clear to me today, as it was at the time of this correspondence between myself and Roadway, that the Election Office had not agreed, nor acquiesced to, Roadway's construction of prior notice or the limitation on the duration of non-employee campaigning at Roadway facilities.*

2. Negotiations with Roadway During the Current Election Cycle

*As a result of the protest filed in Aldridge, P-171-LU667-SCE (November 21, 1995), the Election Officer attempted to engage in discussions with Roadway concerning parking lot access at its facilities. Thus, the Election Officer sent Roadway a proposal which substantially mirrored the proposal sent to Roadway by Mr. Holland in 1991. In response, Roadway counter-proposed with the many of the same restrictions on access which are now contained in the nation-wide policy it has issued at its facilities, e.g., 24-hour notice, limitation to four campaigners and a limitation on the time of campaigning. Protest Chief Benetta Mansfield contacted counsel for Roadway and stated that the Election Officer found such across-the-board limitations unacceptable. As the protester in Aldridge was subsequently granted access to the Roadway facility in Memphis, Tennessee, the protest was resolved and Ms. Mansfield indicated that access cases with Roadway would be considered as protests arose. Contrary to Roadway's assertion in response to these protests, the Election Officer did not agree to across-the-board restrictions on parking lot access.*

3. The Current Protests

*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. However, the rules also state that "the rights are presumptively available notwithstanding any employer rule or policy to the contrary" (emphasis added).*

*In approving the Rules, United States District Court Judge David N. Edelstein considered an objection to the right of access to employer premises filed by Pepsi-Cola Company ("Pepsi"). Pepsi contended that the rule contravenes the Supreme Court's ruling in Lechmere Inc. v. NLRB, 502 U.S. 527 (1992). The Court rejected this argument, and held as follows:*

*[T]his Court's authority to enforce the Consent Decree extends not only to the parties to the Consent Decree but also to employers who "are in a position to frustrate the implementation of [the Consent Decree] or the proper administration of justice" . . . [T]he only way to ensure that each candidate has a meaningful opportunity to meet with the electorate and to explain his or her views is to provide candidates with a right of access to employer premises.*

*U.S. v. IBT, aff'd as modified on other grounds, \_\_ F.3d \_\_, 1996 WL 316635 (2d Cir. June 13, 1996).*

*Here, Roadway does not deny that it instituted an across-the-board policy on access to its parking lots, as set forth in its "IBT Election Campaigning Guidelines" ("Guidelines"). Roadway states that the guidelines are reasonable because they were accepted in the last election. Thus, in a letter to the Election Officer dated September 4, 1996, Roadway stated:*

*As an initial matter, Roadway agreed prior to the last IBT election monitored by an Election Officer that it would allow limited access to Company property to persons involved in the campaign. At that time, Roadway came up with specific guidelines which it distributed to its facilities throughout the Company. . . . [T]he Election Officer has been aware for some time of these limited restrictions and never indicated to the Company that it had taken an unacceptable approach. To the contrary, Roadway developed the guidelines following extensive negotiations with the Election Officer at the time of the last election, and Roadway subsequently provided the Election Officer with a copy of the guidelines. The guidelines for this election are identical to the guidelines previously used. Because the guidelines helped to maintain an orderly campaign during the last election, Roadway is using the same guidelines again.*

*However, as noted above, Mr. Holland states that no such agreement was reached. Moreover, a review of the 1991 correspondence reveals that the same restrictions were not discussed in 1991. In fact, Mr. Holland has advised the Election Officer as follows:*

*Additionally, I have received and reviewed Roadway's "IBT Election Campaigning Guidelines" which I understand Roadway has adopted, and is seeking to enforce, with respect to the 1996 Teamster election of International Union officers. In those Guidelines, Roadway limits campaigning to four (4) campaigners, and further restricts campaigning to a radius of twenty-five (25) feet around employee entrances. As Election Officer in 1991, I recall no discussions at all in 1991 with Roadway concerning these restrictions.*

*In Terrazas, P-825-LU63-CLA (July 11, 1996), aff'd, 96 - Elec. App. - 217 (KC) (July 22, 1996), the Election Officer found that an attempt by an employer to condition access to its parking lot on employee's signing a liability release violated "the terms and limits of the right to work-site access have been established by the Court and by the Rules. [The employer] cannot unilaterally alter these terms and limitations merely because it objects to them." The Election Officer rejects the terms of limited access offered by Roadway. The conditions demanded by Roadway deter and improperly limit the very type of face-to-face campaigning provided by the Rules.*

*Roadway claims that the rule requiring 24-hour advance notice is necessary in order to "prepare" for the campaign activities by notifying security and other personnel that "non-employees will be granted limited access to Company property." IBT members who seek access to campaign are not required to provide advance notice under the Rules. See Terrazas, supra. Security personnel should be made aware that, under the Rules and the Consent Decree, IBT members have a right to campaign in the parking lot. Under the Rules, the employer "may require reasonable identification to assure that a person seeking access to an employee parking lot pursuant to this rule is a candidate or other member entitled to such access." Article VIII, Section 11(e). Thus, reasonable security interests are already accommodated. Where circumstances warranted, the Election Officer has agreed to limited advance notice and has discussed this possibility with Roadway. Roadway insists, however, that it could only agree to 24-hour advance notice at all of its facilities, regardless of the circumstances, for "security reasons."*

*Roadway also purports to require that "candidates keep their complement of campaigners to four persons at any one time." Roadway's claim is that this rule protects the safety of goods stored in their facilities. In reaching this limitation, moreover, Roadway counts its own employees who may accompany non-employee campaigners. The Election Officer again finds an across-the-board application of this rule to be justification and in violation of the Rules. The Rules do not create access for non-employees to the building or other parts of employer premises, or to access the parking lots for any purpose other than campaigning. The Election Officer finds that keeping the "complement" down to four persons is an unnecessary across-the-board restriction on campaigning. Roadway has not provided information that four campaigners is reasonable based upon the small size of any particular parking lot, but enforced it as an across-the-board restriction on campaigning.*

*Roadway further purports to limit campaigning by restricting access to only one slate at a time, in order to avoid confrontations that might impact the safety of Roadway employees and property. The Election Officer has previously found in Hoffa, P-784-LU282-NYC (June 14, 1996), that speculation as to a possible problem does not warrant the curtailment of important, protected rights under the Rules. If trouble arises, the employer may request that the campaigners leave the property or take other appropriate action. The Rules do not permit restrictions on access merely because trouble could ensue.*

*The fundamental goal of the Consent Decree and the Rules is a fair, open and democratic election process. The ability of candidates and members to engage in face-to-face campaigning is critical to that process. Thus, the Rules create and enforce a right for members to enter upon employer premises to campaign*

*in parking lots used by members. Article VIII, Section 11(e). As Judge Edelstein stated in affirming that right, "the only way to ensure that each candidate has a meaningful opportunity to meet with the electorate and to explain his or her views is to provide candidates with [such] a right . . ." United States v. International Bhd. of Teamsters, 88 Civ. 4486 (DNE) (SDNY slip op. August 22, 1995, at 40).*

Hoffa, supra.

*Other restrictions Roadway has imposed involve the limiting of campaigners to within a 25-foot radius of the employee entrances to the parking lot. This means that, in at least some Roadway locations, campaigners will be restricted to an area which may be hundreds of feet away from where employees actually park their cars and enter the terminal. Campaigners would only be able to come face-to-face with members as their cars entered the lot and then, only if they roll down their windows and hold up traffic. Limiting the campaigners to a 25-foot radius of any entrance substantially curtails campaigners' limited right of access and is unacceptable.*

*The Election Officer finds that the rules that Roadway has issued impose impermissible restrictions on campaigning that substantially limit campaign rights, as protected in the Rules and the Consent Decree, and cannot be upheld.*

*For the foregoing reasons, the protest is GRANTED.*

*When the Election Officer determines that 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 nature and seriousness of the violation, as well as its potential for interfering with the election process.*

*The Election Officer orders the following:*

- 1. Roadway shall immediately cease and desist from enforcing its parking lot access rules as applied to the International officer election.*
- 2. The Election Officer directs Roadway to permit campaigning in the employee parking lots at all facilities where it employs IBT members. This grant of access will only be limited by the conditions set forth in Article VIII, Section 11(e) of the Rules. IBT members who seek access to campaign will not be required to provide advance notice, campaign within 25 feet of the employee parking lot entrance, campaign for only two hours or to limit their complement to four campaigners. Roadway, however, may contact the Election Officer concerning access to those facilities or in those circumstances where it believes limitations are appropriate.*
- 3. Within two (2) working days of the receipt of this decision, Roadway will submit an affidavit to the Election Officer in which it acknowledges its compliance with this decision.*



*Within two (2) days of posting the notice, Roadway Express shall file an affidavit with the Election Officer demonstrating compliance with this directive.*

*4. In order that the employees of Roadway Express are fully advised of their rights, the Election Officer further directs that within seven (7) days of the date of this decision, Roadway will sign, duplicate and post the "Notice to Roadway Express Employees" on all Roadway employee bulletin boards for thirty (30) consecutive days.*

*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, 1996).*

*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:*

*John Cetinske & Harold Yates*  
*September 20, 1996*  
*Page 10*

*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*  
*Judith E. Kuhn, Regional Coordinator*  
*Bruce Boyens, Regional Coordinator*

## ***NOTICE TO ROADWAY EXPRESS EMPLOYEES***

***IBT members have the right to campaign for or against candidates in the International officer election. Roadway will permit campaigning in the employee parking lots at all facilities where it employs IBT members. Prior to seeking access, IBT member who have right to campaign in the parking lot shall present reasonable identification to Roadway. Such campaigning shall not interfere with the normal business activities of Roadway.***

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***Date***

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***Roadway Express***

***This is an official notice which must remain posted for 30 consecutive days and must not be defaced or altered in any manner or be covered with any other material.***

***Approved by Barbara Zack Quindel, IBT Election Officer.***