

June 5, 1996

VIA UPS OVERNIGHT

Anthony S. Montante
64 Seneca Avenue
Oneida Castle, NY 13421

Everett Campbell, Secretary-Treasurer
Teamsters Local Union 317
566 Spencer Street
Syracuse, NY 13204

James Carlin, General Manager
United Refrigerated Services
264 Farrell Road
Syracuse, NY 13209

James E. Augst
701 W. State Street
Ithaca, NY 14850

Thomas Smith
United Refrigerated Services
P.O. Box 52427
Atlanta, GA 30355

Bill Murphy
103 Ludden Parkway
Syracuse, NY 13219

Re: Election Office Case Nos. P-598-LU317-PGH
Post-9-LU317-PGH
DECISION ON REMAND

Gentlemen:

This matter involves a pre-election protest deferred by the Election Officer for post-election review and a post-election protest concerning voter eligibility. Anthony S. Montante, an independent candidate for delegate from Local Union 317, filed both protests pursuant to Article XIV, Section 2(b) and Section 3(a) of the *Rules for the IBT International Union Delegate and Officer Election* (“*Rules*”).

In P-598-LU317-PGH, the protester alleges that United Refrigeration Services (“URS”) refused to allow him access to its parking lot in order to campaign, in violation of the *Rules*.

The Election Officer deferred this protest for post-election review pursuant to her authority under Article XIV, Section 2(f)(2) of the *Rules*.

The counting of the ballots for the mail-ballot delegate election at Local Union 317 took place on March 21, 1996. There were 1,206 ballots cast, of which 1,135 were counted. One slate and 10 independent candidates competed for the five delegate positions and two alternate delegate positions. The Campbell slate won four delegate positions and the two alternate delegate positions. Mr. Montante, an unsuccessful independent candidate for delegate, received 364 votes and finished eighth, 151 votes behind Joe Traver, the successful candidate for the fifth delegate position.

In a decision issued May 15, 1996, the Election Officer determined that URS' denial of access to the protester violated the *Rules*. She directed that URS grant members access to its parking lots in order to campaign. The Election Officer further concluded that the refusal to grant access to Mr. Montante could not have affected the outcome of the election. Thus, the Election Officer determined that none of the successful candidates in the election had attempted or been granted access to the facility either and, therefore, none of the candidates elected had an unfair advantage over Mr. Montante or any of the other unsuccessful candidates.

Mr. Montante appealed this decision to the Election Appeals Master. A hearing was held before Election Appeals Master Designee Geoffrey S. Berman on May 23, 1996. In a decision issued on May 29, 1996, the Election Appeals Master Designee found that when analyzing a violation in a post-election context, the Election Officer must determine whether the violation could have sufficiently affected the overall outcome of the election, not just the performance of the candidate who filed the protest. His examination of the election record revealed that two candidates, James Augst or Bill Murphy (who finished sixth and seventh in the delegate race, respectively) could have been elected if all URS employees voted unanimously for them. The Election Appeals Master Designee thus remanded the matter with the following specific instructions:

[T]he Election Officer is directed to address whether either Mr. Augst or Mr. Murphy attempted to campaign at URS, and if so, whether those two candidates obtained, or could reasonably have obtained adequate access to the voters at URS by alternate means, thereby eliminating the possibility that URS's violation affected the election's outcome.

(Footnote omitted)

The supplemental investigation of this protest was conducted by Regional Coordinator William B. Kane.

Anthony Montante

June 5, 1996

Page 3

The supplemental investigation revealed that neither Mr. Augst nor Mr. Murphy campaigned or attempted to campaign at URS. Mr. Augst states that he did no work-site campaigning at all during the delegate election process, while Mr. Murphy states that he campaigned in a limited fashion at his workplace, a United Parcel Service facility, and at no other work sites.

As a result, it is the determination of the Election Officer that the violation committed by URS did not have sufficient scope to effect the outcome of the delegate election. As stated in the original protest, however, it is necessary to provide a remedy to insure that URS accedes to the rights granted in the *Rules* pertaining to the International officer elections. In these circumstances, the Election Officer again directs URS to grant access to the parking lot at its Syracuse facility to non-employee IBT members for campaign purposes. See Schneider, P-453-LU70-CSF, et al. (April 12, 1996), aff'd 96 - Elec. App. - 180 (April 25, 1996) (KC).

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, 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

Anthony Montante

June 5, 1996

Page 4

cc: Kenneth Conboy, Election Appeals Master
William B. Kane, Regional Coordinator