

July 6, 1998

VIA UPS OVERNIGHT

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Re: Election Office Case No. PR-086-LU688-RMT

Gentlemen:

Dan R. Eby, a member of Local Union 688, 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 United Parcel Service ("UPS"). The protester alleges that Dave Zumbahl, also a member of Local Union 688, was refused permission to place campaign materials, including issues of the *Convoy Dispatch*,¹ inside employee lockers located at the UPS terminal in Jefferson City, Missouri. UPS admits that it failed to grant Mr. Zumbahl's request to engage in this campaign activity but contends that the conduct is not protected by the ***Rules***.

The protest was investigated by Regional Coordinator Jonathan Wilderman.

¹ The *Convoy Dispatch* is published by the Teamsters for a Democratic Union ("TDU"), an "independent committee" as that term is defined by the ***Rules***. Hoffa, PR-039-IBT-EOH (March 10, 1998), aff'd, 98 - Elec. App. - 341 (KC) (April 9, 1998).

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The investigation disclosed that Mr. Zumbahl works as a feeder driver in the UPS facility at Jefferson City, Missouri. On April 14, 1998, he asked UPS supervisor Mary Renner if he could distribute campaign literature including the *Convoy Dispatch* by placing copies of the materials in employee lockers. Ms. Renner refused to grant this request.

For at least the last ten years, UPS has operated under a "No-Solicitation" policy which prohibits employees from distributing or circulating "any written or printed material in work areas at any time, or during his or her working time or during the working time of the employee or employees at whom such activity is directed." See, Young, P-1256-LU41-MOI (November 27, 1996).

According to UPS, the policy permits the distribution of campaign literature in "break areas," designated locations in which vending machines are placed or food is consumed by employees. According to Human Relations Manager Rick Warlick, UPS considers the locker room a "work area" where campaigning is prohibited. In May 1998, UPS installed a new break room in the Jefferson City terminal and has permitted campaigning to take place there.

Mr. Zumbahl states that, while he doubts that UPS is aware of it, copies of the *Convoy Dispatch* were inserted into employee lockers at the Jefferson City terminal on "numerous" occasions during the initial election. He also states that, at times, printed materials of a general nature were also placed in the lockers.

The **Rules** at Article VIII, Section 11(d) provide as follows:

(d) No restrictions shall be placed upon candidates' or members' preexisting rights to use employer or Union bulletin boards for campaign publicity. Similarly, 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. Such facilities and opportunities shall be made available to all candidates and members on a nondiscriminatory basis.

The **Rules** at Article VIII, Section 11(a) protect the rights of candidates and members to campaign during lunch hours or breaks. But such campaigning as occurs on employer premises is controlled by Article VIII, Section 11(d), which requires the showing of an established "pre-existing" right. The Election Officer has recognized that past practice is a relevant factor in determining whether a "pre-existing right" exists for purposes of this section. In Re: Hall, 90 - Elec. App. - 1 (October 4, 1990); Brinkman, P-151-LU305-PNW (September 18, 1995), aff'd, 95 - Elec. App. - 21 (KC) (October 10, 1995).

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When the “pre-existing right” is established, Article VIII, Section 11(d) prevents modification of the practice during the election process. Jesses, P-183-LU612-SEC (February 5, 1991) (“the employer cannot now change its practice” with respect to parking lot access); Camarata, P-709-LU299-MGN (April 10, 1991); Benson, P-431-LU104-RMT (undated). Furthermore, the **Rules**, as quoted above, specifically require that access rights be applied without discrimination.

Rather than rely on the statements of Mr. Zumbahl to establish a “pre-existing right,” the protester refers to two different events which occurred at the UPS facility in Earth City, Missouri, approximately 135 miles from the Jefferson City terminal. The first incident involved the use of the protester’s own locker as a collection point for grievance information. The second event concerns a settlement agreement entered into by UPS in connection with the resolution of the protest in Eby, P-597-LU688-MOI (April 22, 1996).²

The Election Officer concludes that neither the statements of Mr. Zumbahl or the events relating to the Earth City facility are sufficient to establish a pre-existing right to insert materials in employee lockers at the Jefferson City terminal. Mr. Eby’s effort to collect grievance information was work related. There is no evidence that settlement agreement in the Earth City matter was intended by UPS to be applied at Jefferson City or any of its other terminals. Neither Earth City incident establishes a pre-existing right in the Jefferson City terminal and there is no evidence of employer discrimination in the application of the UPS “no-solicitation” policy.

Accordingly, the protest is DENIED.

Any interested party not satisfied with this determination may request a hearing before the Election Appeals Master within one (1) 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

² In P-597, the protester alleged that UPS had improperly removed a copy of the *Convoy Dispatch* from a “radio box” in the Earth City facility. In an effort to resolve the case, UPS agreed to permit IBT members assigned to the Earth City terminal to receive campaign literature in these containers, which employees use to store personal radios.

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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, 444 North Capitol Street, NW, Suite 445, Washington, DC 20001, Facsimile (202) 624-3525. A copy of the protest must accompany the request for a hearing.

Sincerely,

Michael G. Cherkasky
Election Officer

MGC:chh

cc: Kenneth Conboy, Election Appeals Master
Jonathan Wilderman, Regional Coordinator