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VIA FACSIMILE & FIRST-CLASS MAIL

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Re: Election Office Case Nos. PR-208-AB-EOH
PR-217-AB-EOH

Gentlepersons:

Dave Eckstein (PR-208) and Rick Dade (PR-217), candidates in the 1996 International

Brotherhood of Teamsters ("IBT") International officer election, filed protests pursuant to the ***Rules for the 1995-1996 IBT International Union Delegate and Officer Election ("Rules")*** alleging that Anheuser-Busch, Inc. ("Anheuser-Busch" or the "Company") had prohibited them from campaigning in company employee parking lots. PR-208 alleges that on August 5, 1998, Anheuser-Busch barred Mr. Eckstein from campaigning in the parking lot at the Newark, New Jersey Budweiser brewery. PR-217 alleges that on August 6, 1998, Anheuser-Busch barred Mr. Dade from campaigning in an employee parking lot at a Company facility in Baldwinsville, New York. In accordance with Article XIV, Section 2(e), Anheuser-Busch received notice of PR-208 by overnight mail on August 11, 1998; and PR-217 on August 13. The protests arise under Article VIII, Section 11(e) of the ***Rules***, which provides, inter alia, to candidates and their IBT-member supporters, a presumptive right of access for campaign purposes to employee parking lots on employer property.

On August 21, 1998, Anheuser-Busch wrote to the Election Officer about these protests. Anheuser Busch stated that it operates 12 breweries nationwide and that the IBT represents approximately 8,000 workers at those facilities. Letter from Michael M. Connery to Michael G. Cherkasky (August 21, 1998) (the "Company 8/21/98 Letter") at 1. The Company stated that it is in the midst of a labor dispute with the IBT involving negotiations over a new collective bargaining agreement, and argued that allowing non-employee candidates to campaign in Company employee parking lots could potentially disrupt its facilities. Id. at 2. The Company requests an order "instructing all non-employee candidates in the IBT Rerun Election to refrain from coming onto the Company's premises during this critical time." Id. at 2.

The Company also requested an opportunity "to more fully state its case in a formal position statement" and suggested that the Election Officer invite submissions from candidates and slates. Company 8/21/98 Letter at 2-3. On August 27, 1998, the Election Officer sent a letter to Anheuser-Busch and to candidates and slates (or their counsel) setting September 3, 1998 as the deadline for written submissions. Letter from Election Officer Cherkasky to Michael M. Connery, Esq. at 1-2. Because the Company had sought the opportunity to submit additional briefing, the Election Officer directed that Anheuser-Busch preserve the status quo pending the adjudication of the protests and allow non-employee candidates to campaign in employee parking lots in accordance with Article VIII, Section 11(e) of the ***Rules***. Id. at 2. Anheuser-Busch acknowledged the Election Officer's letter on August 28, 1998 but refused to comply with the status quo order. Letter From Michael M. Connery, Esq. to Election Officer Cherkasky at 2 (Aug. 28, 1998). The Election Officer later set September 8, 1998 as the deadline for the Company to complete all of its submissions on the issue of parking lot access, including any specific response to PR-208 and PR-217.

Anheuser-Busch submitted statements of counsel to the Election Officer on September 3 and September 8, 1998. On September 3, 1998, the Hoffa Slate and the Leedham Slate submitted a letter on the issue of parking lot access. On September 3, 1998, a letter that addressed parking lot access was submitted on behalf of the protesters. That letter also addressed the facts of PR-208 and PR-217, and was accompanied by sworn declarations from David Eckstein and Richard Hermann. All of these submissions were exchanged among the interested parties. This constitutes the Election Officer's ruling on the Company's request and

PR-208 and PR-217.

This protest was investigated by Regional Coordinator Barbara Deinhardt. For the reasons set forth below, the Election Officer grants the protests and denies Anheuser-Busch's request to exempt the Company from the ***Rules*** provision granting access to parking lots for the limited purpose of campaigning for the IBT International officer election.

I. Anheuser-Busch's Opportunity to Present its Position on PR-208 and PR-217

The Company purports to reserve an objection to the Election Officer's disposition of the protests without first deciding the blanket application. Company 9/8/98 Letter at 2. The Company states that it requested a stay of the protest process "pending the adjudication of the Company's request for relief, and that the lack of clear notification that such a stay was not in place unfairly prejudiced Anheuser-Busch's ability to adequately respond to the protests." Id. This argument is rejected.

First, no proper objection was lodged with the Election Officer. The ***Rules*** make no provision for an automatic stay of the protest process based on counsel's bare request and no authority is cited for granting such a stay.

Second, Anheuser-Busch received timely notice of the protests with an invitation to submit evidence and argument as it saw fit. The Election Officer in no way modified those initial notices. The Company has had four weeks from the first notification to investigate and respond to the specific charges.

Third, and most important, Anheuser-Busch does not provide any basis on which to conclude it has suffered actual prejudice in its ability to investigate and respond to the protests. The Company received copies of the submissions made to the Election Officer by the protesters and other interested parties. Even without those submissions, the Company knew the nature of the protests, and the date, time and circumstances of the underlying incidents. The Company elected to respond to the protests through counsel, and has not obtained affidavits or other competent proof from its employee-witnesses concerning the facts of PR-207 or PR-218. That is the Company's strategic choice and it is not a basis for claiming prejudice.

II. Facts

Dave Eckstein is a candidate for International Trustee. Mr. Eckstein states that on August 5, 1998, he sought to campaign at the Budweiser brewery in Newark, New Jersey. According to Mr. Eckstein's protest letter, an Anheuser-Busch manager stated that he "couldn't campaign on the company parking lot" and that "it was against company policy to allow solicitation." The manager then escorted Mr. Eckstein off of the lot. In a declaration submitted in support of the protest, Mr. Eckstein states that his sole purpose for entering the parking lot was to engage in campaign activity. Mr. Eckstein states that he has no reason to believe that his planned campaign activity "would have been transformed into an anti-company rally or into a contract-related meeting. To the contrary, the union is holding such rallies with

Anheuser-Busch employees all over the country and they do not need candidates to do that." Declaration of David Eckstein, executed on August 10, 1998, ¶ 3. Mr. Eckstein is not employed by Anheuser-Busch.

The Company disputes none of these facts concerning Mr. Eckstein's presence at the employee parking lot of the Newark facility. It argues that because Mr. Eckstein was in the parking lot, he must have gained unauthorized entry (i.e., entry not in accordance with Company procedures) and could therefore be excluded.

Rick Dade is a candidate for Eastern Region vice-president. His protest letter states that on August 6, 1998, he sought to campaign in the employee parking lot of the Anheuser-Busch facility in Baldwinsville, New York. An Anheuser-Busch official ordered Mr. Dade to leave the parking lot. Mr. Dade states that he showed the pertinent ***Rules*** provision to this official, and that the official responded by stating "he had been told by people 'higher up' in Anheuser-Busch management to remove us from the parking lot." Mr. Dade states that he made two separate attempts to campaign in the employee parking lot on August 6, 1998, and that Anheuser-Busch had him removed both times.[1] Mr. Dade is not employed by Anheuser-Busch.

Robert Hermann, an IBT member who works at the Baldwinsville brewery and who accompanied Mr. Dade on August 6, submitted a declaration stating that the Company has, in the past, allowed campaigning at the location from which they were excluded. Declaration of Robert Hermann, executed September 1, 1998, ¶ 4. Similar to Mr. Eckstein's statement, Mr. Hermann states that the candidate's campaign activity was planned and expected not to involve company contract issues and the specific labor dispute.

The Company contends that it has grounds to exclude Mr. Dade because he left only when confronted by the local police. Company 9/8/98 Letter at 4. The Company argues that "Mr. Dade and his companions behaved in a disruptive and inappropriate manner in refusing the Company's request to leave the parking lot," id., although the Company provided no evidence whatsoever of any physical violence, or even a threat of violence.

[1]Mr. Dade asserts, with no basis, that Anheuser-Busch's decision to exclude him from campaigning in the parking lot reflects company support for the "Hoffa Campaign." Because Mr. Dade offers nothing more than his personal speculation on the subject, the Election Officer summarily rejects this allegation.

Thus, Anheuser-Busch does not contest that it denied the candidates access to company property to campaign. Its main response to the protests and in support of its own application, is that its denial of access was legally justified. The Company states that its last collective bargaining agreement with the IBT expired on February 28, 1998. The Company is taking the position that negotiations have reached an impasse and that it "currently intends to implement its final offer beginning in September, 1998." Company 8/21/98 Letter at 2. According to Anheuser-Busch, its lawful actions have been met "with threats of job actions, work stoppages and other disruptions of the Company's operations." Id.; Company 9/3/98 Letter at 2. As an example of the problem, the Company claims that a candidate wanted to campaign at the Jacksonville, Florida brewery and had planned to raise contract issues. The Company therefore excluded the candidate from the parking lot. Ultimately, the candidate held a campaign rally near the Anheuser-Busch facility that the Company states involved campaign issues only and did not touch on the labor dispute. Company 9/3/98 Letter at 2. This "incident" is cited as an example of the risks that the Company contends will arise if campaigning is not banned from brewery parking lots. Id. The Company argues that the background situation of the "labor dispute" justifies its proposed ban on campaigning by non-employees in Company parking lots.[2] According to Anheuser-Busch, the risks of work disruptions and ***Rules*** violations could be averted effectively only by imposing a complete ban on non-employee campaign activity on Company property.

Anheuser-Busch foresees four particular problems that could result from non-employee campaign activity. First, it contends "that non-employee candidates campaigning in parking lots of the Company's breweries will inevitably be drawn into the current labor dispute." Company 8/21/98 Letter at 2; see also Company 9/3/98 Letter at 2. Second, non-employee campaign visits "will readily become anti-Company . . .." Company 8/21/98 Letter at 2; see also Company 9/3/98 Letter at 2-3. Third, non-employees may violate the ***Rules*** and try to campaign on Company property beyond the employee parking lot. Company 8/21/98 Letter at 2; see also Company 9/3/98 Letter at 3-4. Fourth, the Company cannot be expected to take any steps to protect itself under the ***Rules*** because if it asked a non-employee to leave on grounds of improper conduct, "the Company would readily be accused of partisanship." Company 8/21/98 Letter at 2; see also Company 9/3/98 Letter at 4-5. The Company seeks a ruling in its favor that would apply uniformly at all brewery work sites because the issue of "non-employee campaigning on the Company's premises during the present labor dispute is a circumstance common to all 12 breweries." Company 8/21/98 Letter at 3; see also Company 9/3/98 Letter at 5.

III. Analysis

A. The *Rule* Providing Limited Access to Employee Parking Lots

[2] Anheuser-Busch's application concerns only the employee parking lots at its 12 breweries. Company 9/3/98 Letter at 1.

The protests, and Anheuser-Busch's application, arise under Article VIII, Section 11(e) of the ***Rules***. That section provides, in pertinent part:

> Subject to the limitations in this Subsection, . . . (iii) a candidate for International office and any Union member within the regional area(s) in which said candidate is seeking office may distribute literature and otherwise solicit support in connection with such candidacy in any parking lot used by Union members to park their vehicles in connection with their employment in said regional area(s); (iv) each member of the International Union who is employed within the regional area(s) in which said candidate is seeking office has the reciprocal right to receive such literature and/or solicitation of support from such candidate for International office or candidate's advocate.
>
> The foregoing rights are available only in connection with campaigning during the 1995-1996 IBT International Union Delegate and Officer Election conducted pursuant to the Consent Order and only during hours when the parking lot is normally open to employees. The rights guaranteed in this Subsection are not available to an employee on working time, may not be exercised among employees who are on working time and do not extend to campaigning which would materially interfere with the normal business activities of the employer. An 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. Nothing in this Subsection shall entitle any candidate or other Union member to access to any other part of the premises owned, leased, operated or used by an employer or to access to a parking lot for purposes or under circumstances other than as set forth herein.
>
> The foregoing rights are presumptively available, notwithstanding any employer rule or policy to the contrary, based upon the Election Officer's finding that an absence of such rights would subvert the Consent Order's objectives of ensuring free, honest, fair and informed elections and opening the Union and its membership to democratic processes. Such presumption may be rebutted, however, by demonstrating to the Election Officer that access to Union members in an employee parking lot is neither necessary nor appropriate to meaningful exercise of democratic rights in the court of the 1995-1996 election. An employer seeking to deny access to Union members in an employee parking lot may seek relief from the Election Officer at any time.

Rules Article VIII, Section 11(e) ("Section 11(e)") (emphasis added). This provision grants candidates in the IBT International officer election a limited right to enter employer property, without regard to the candidate's status as an employee of the particular employer. The right of entry is limited to employee parking lots; the right of entry may be exercised only for the purpose of, and in connection with, campaigning in the current IBT International officer election; and the right cannot be exercised on work time and cannot materially interfere with the employer's normal business activities.[3]

Section 11(e) balances the property interests of employers with the critical need of candidates to the IBT International officer election to campaign face-to-face with the membership. When the ***Rules*** were promulgated, the Pepsi-Cola Company ("Pepsi") (an employer of approximately 7,500 IBT members) objected to the access right defined by Section 11(e). Pepsi argued that the rule contravened Lechmere, Inc. v. NLRB, 502 U.S. 527 (1992), in which the Supreme Court held that non-employees do not have the right to conduct union organizing campaigns on employer property unless there is no other reasonably effective access to that membership. The District Court rejected Pepsi's argument and approved Section 11(e). First, the District Court held that Lechmere was "inapposite" because that case construed Section 7 of the NLRA, and the NLRB's administrative interpretations of that statute. United States v. IBT ("1996 Election Rules Order"), 896 F. Supp. 1349, 1366 (S.D.N.Y. 1995), aff'd 86 F.3d 271 (2d Cir. 1996). In contrast, because the Consent Decree (and not federal labor law) provided the basis for the Section 11(e) limited access rule, the Lechmere standard did not govern the question of access to employer property in the supervised IBT International officer election. Id.

Second, the District Court found that Section 11(e) limited access rule was "both warranted and necessary" to the implementation of the electoral provisions of the Consent Decree.

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[3]Anheuser-Busch argues that it need not allow the protesters into its employee parking lots to campaign because they have failed to show that they lack a reasonable alternative to the parking lot as a place to conduct campaign activity directed at large numbers of IBT members. The ***Rules*** dispose of this argument. As approved by the District Court and the Second Circuit Court of Appeals, the 1996 ***Rules*** create a presumption in favor of access to employer parking lots based upon the District Court's agreement with the Election Officer's finding that means of campaigning other than parking lot access are "woefully inadequate" to reach concentrated masses of IBT members. In-person campaigning to the membership is a right essential to the full implementation of the Consent Decree's election provisions. Thus, the burden is on Anheuser-Busch to show why the presumption should fail, and a "labor dispute exception" be created to this very limited intrusion on employer's rights. ***Rules***, Article VIII, Section 11(e).

> In the context of the 1991 IBT election, the Second Circuit recognized the importance of access to employer premises for the purpose of campaigning "where no feasible alternative for campaigning by candidates for union office is available." Yellow Freight, 948 F.2d at 104. This Court agrees with the Election Officer that other methods of campaigning, including mailings, telephone campaigns, home visits, and alternative methods of face-to-face campaigning are woefully inadequate. . . . Thus, the proposed rule is crucial to the achievement of a free, fair, and democratic election process, and this Court's power to enforce the rule is firmly rooted in this Court's authority pursuant to the All Writs Act.

1996 Election Rules Order, 896 F. Supp. at 1367.

Third, the District Court concluded that the Section 11(e) limited access rule was "agreeable to the usages and principles of law"

> because the rule sets forth procedures that limit the intrusion on an employer's property rights to a minimum. The right of access is extremely circumscribed in scope. . . . [T]he rule provides no right to enter any area other than an employee parking lot and IBT members can gain access only during hours when the parking lot is normally open to employees. IBT members only have a right of access for the purpose of campaigning for . . . International Union office and only during hours when a parking lot is normally open to IBT members. The rule creates no right to campaign or to receive campaign advocacy during working hours, and campaign activity that would materially interfere with the normal business activities of the employer is not permitted. An employer may require a person seeking access to an employee parking lot to produce reasonable identification in order to assure that such person is a candidate or other IBT person entitled to such access. In addition, the right of access afforded by the rule is a presumptive right only, and any employer may rebut this presumption by demonstrating to the Election Officer that the exercise of the right by IBT members with regard to that employer is "neither necessary nor appropriate to meaningful campaigning or IBT members' becoming informed about candidates." (See Election Officer's Memorandum at 29.)

1996 Election Rules Order, 896 F. Supp. at 1367.

In approving the ***Rules*** the District Court considered and rejected employer objections addressed specifically to the Section 11(e) limited access rule. For purposes of implementing

the Consent Decree, the District Court has held that this rule strikes the proper balance between an employer's property interests, and the Consent Decree's objective of promoting democracy and rooting out corruption. Under Section 11(e), employers must grant non-employees access to employee parking lots unless an employer, by application addressed to a specific situation, demonstrates that access "is neither necessary nor appropriate to meaningful exercise of democratic rights in the course of the 1995-1996 election." Section 11(e).

B. Anheuser-Busch's Application to Ban Non-Employee Candidate Campaigning from Employee Parking Lots At 12 Breweries

Anheuser-Busch effectively concedes, as it must, that its employees have the right to engage in campaign activity on Company property so long as the activity does not occur on work time or disrupt regular business activity.[4] Indeed, the Company did not object (because it could not) when "at least two Baldwinsville employees took literature from Mr. Dade and distributed it inside the employee's parking lot." Company 9/8/98 Letter at 4. This concession undermines Anheuser-Busch's arguments that campaign activity will be per se disruptive and so justifies rebutting Section 11(e)'s presumption of access to employee parking lots.

The Company argues that the message that will be conveyed in the course of campaigning for International officer candidates will inevitably evolve into anti-company and anti-contract rhetoric that will disrupt business operations. But because the Company concedes it cannot stop its own employees from speaking about the International officer election or campaigning – even inside its breweries, so long as the speech is not disruptive and not on work time – the Company is subject to the same purported risk of disruption at any time from its own employees. The particular facts of the protests here provide some evidence that candidates may pose less risk of disruption, given Mr. Eckstein's sworn statement that his intent, plan and expectation was only to campaign and otherwise to avoid labor issues specific to the Anheuser-Busch dispute.[5]

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[4] The concession is reflected in the limited scope of the application, which seeks an order barring, "all election candidates in the International Brotherhood of Teamsters' ("IBT" or the "Union") Rerun Election who are not Company employees to refrain from coming onto any of the 12 breweries operated by Anheuser-Busch during a critical period in its labor relations with the Union." Company 9/3/98 Letter at 1 (emphasis added).

[5] Mr. Hermann's sworn statement concerning Mr. Dade's plan for campaigning supports the same point as Mr. Eckstein's declaration. Anheuser-Busch's account of the peaceful, campaign rally near the Jacksonville brewery also supports a finding that campaign activity has been carried on properly and without disruption of Company business.

The circumstance of the labor dispute, without more, does not justify a blanket restriction on parking lot access. Such disputes are inherently part of the relationship between unions and employers. On the basis of other protests, the Election Officer knows of contract campaigns involving employees in the Freight, Warehousing and Carhaul divisions, and that does not exhaust the IBT's current negotiation activity. An exception to access based on showing merely that a labor dispute exists would swallow up the access presumption completely.

The Company's real arguments are: 1) that Lechmere governs, notwithstanding the Consent Decree and the ***Rules***, and confirms the Company's "unfettered right to exclude non-employees from its premises;" and 2) the Second Circuit rulings in United States v. IBT ("Yellow Freight"), 948 F.2d 98 (2d Cir. 1991) and United States v. IBT ("Sikorsky"), 955 F. 2d 171 (2d Cir. 1992), require a non-employee seeking campaign access to "establish [first] that no reasonable alternative for access to those employees exists." Company 9/8/98 Letter at 4-5. Neither argument has merit.

When the ***Rules*** for the 1996 IBT International officer election were approved, the District Court expressly addressed the applicability of Lechmere and found the case "inapposite." 1996 Election Rules Order, 896 F. Supp. at 1366. Moreover, and following logically from that approval, Section 11(e) and the presumption of parking lot access that it creates, has been upheld in rulings of the Election Officer and the Election Appeals Master. In Mee, P-1161-LU853-CSF (November 5, 1996), aff'd, 96 - Elec. App. - 273 (KC) (November 15, 1996), the protester alleged that Warden West Corporation had excluded non-employees from campaigning in its employee parking lot. Warden West argued that allowing in non-employees created security concerns and a risk of pilferage. The Election Officer rejected these concerns as insufficient to outweigh the Section 11(e) presumption. The Election Officer also rejected Warden West's claim that campaigners had adequate alternative access to company employees – specifically, the sidewalk outside the parking lot. The Election Appeals Master upheld that conclusion as follows: "The adequate alternative means claim of Warden West is irrelevant without a threshold showing that conditions at the facility warrant a relaxation of the access requirement. No such showing has been made." In re Mee, 96 - Elec. App. -273 (KC) at 2 (November 15, 1996). This holding recognizes Section 11(e)'s presumption that parking lots are open to non-employee campaigning and that the employer bears the burden of showing that extraordinary circumstances require a different result. See also, In re Saavedra, 96 - Elec. App. - 250 (KC) (October 10, 1996) (Granting protest and holding that Section 11(e) "imposes upon employer companies an obligation to afford access to their premises to union members seeking to distribute campaign literature and obtain support in . . . international elections.") id. at 2: Terrazas, P-825-LU63-CLA (July 11, 1996), aff'd, 96 - Elec. App. - 217 (KC) (July 22, 1996) (Granting protest and rejecting employer's proposal to condition parking lot access on pre-screening of candidate literature and the signing of liability waivers because "the conditions would have a chilling effect on work site campaign activity, and as such, would substantially undermine the remedial purpose of the Election Rules, Consent Decree and Federal labor law.") 96 - Elec. App. - 217 (KC) at 2.

For similar reasons, neither Yellow Freight nor Sikorsky can be read to put onto the candidate the burden of demonstrating a special need for parking lot access. Those cases were

decided in the context of the 1991 Election Rules. The former rules did not contain the Court-approved access rule (Section 11(e) of the ***Rules***) and, instead, analyzed parking lot access issues separately for each facility according to whether such access was a "pre-existing right" of members protected under Section 7 of the NLRA. The Court approval of the 1996 ***Rules***, and its express consideration of the Section 11(e) parking lot access rule over the objection of a major employer of IBT members (Pepsi) created a legal framework different from that which controlled the 1991 International officer election. For the Rerun Election, the ***Rules*** embody a presumption of parking lot access based on findings that such access is "crucial" to implementation of the Consent Decree and that other methods of access are "woefully inadequate."[6] 1996 Election Rules Order, 896 F. Supp. at 1367. Section 11(e) protects employers' legitimate property interests by putting strict limits on campaign activity, and by providing employers with a means to apply to rebut the presumption under the clear test that such access is "'neither necessary or appropriate to meaningful campaigning or IBT members' becoming informed about candidates.'" Id. Anheuser-Busch's application simply does not accept this framework or address the applicable test for rebutting the presumption.

For all these reasons, the Election Officer denies the Company's application for a blanket exception to Section 11(e) covering its 12 breweries.

C. The Two Access Protests

Anheuser-Busch has failed to demonstrate in either PR-208 or PR-217 that it has an adequate basis for denying the candidates access to the employee parking lots.

1. PR-208

The Company argues that it properly excluded Mr. Eckstein because he "gained unauthorized entry to the Newark parking lot . . . in violation of the ***Rules***." Company 9/8/98 Letter at 6. This argument fails because it is premised on accepting Anheuser-Busch's erroneous reading of Section 11(e) as meaning that Mr. Eckstein had no presumptive right to campaign in the employee parking lot. No other basis is argued for excluding Mr. Eckstein.

2. PR-217

[6] Anheuser-Busch has not identified any interest that it has as an employer concerning the legality of Section 11(e) that differs from that voiced by Pepsi on the application to approve the 1991 Election Rules.

Anheuser-Busch again argues (in the face of Section 11(e)) that Mr. Dade had no right to be in the employee parking lot and further states that his visits were "disorderly and disruptive" because the Company had to contact the local police to remove Mr. Dade. Company 9/8/98 Letter at 6. The Company, however, created whatever "disruption" occurred when it sought to evict Mr. Dade in violation of the presumptive right of access conferred by Section 11(e). According to the declaration of Robert Hermann, an eyewitness to Mr. Dade's campaign activity, Mr. Dade addressed only campaign issues and did not become involved in the Anheuser-Busch contract dispute. "Nor, for that matter, would his visit have even been noticeable, not to speak of possibly having any adverse effects, had the company not chosen to call the police and have him evicted." Hermann Dec., ¶ 10. This sworn declaration was provided to the Company during the investigation. The Company has not submitted any sworn response to contradict Mr. Hermann, nor do the Company's submissions state that any such evidence would be forthcoming.

Accordingly, the Election Officer finds that Mr. Dade's campaign activity in the parking lot was not disruptive or disorderly.

The Election Officer finds that Anheuser-Busch's list of reasons to deny access do not overcome the presumption of access set forth in Article VIII, Section 11(e). 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***. Section 11(e) sets out clear limits on campaign activity and the Company may seek aid in enforcing those limits if it first produces competent evidence of a breach. If trouble arises, Anheuser-Busch, as it readily acknowledges, may request that the campaigners leave the property or otherwise comply with Section 11(e)'s restrictions. The ***Rules*** do not permit restrictions on access merely because trouble *could* ensue. Hoffa, supra.

III. Conclusion and Relief

For the foregoing reasons, Anheuser-Busch's application is DENIED and the protests herein are GRANTED.

When the Election Officer determines that the ***Rules*** have been violated, he "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. As a result, the Election Officer directs Anheuser-Busch to permit campaigning in the employee parking lots at its 12 brewery facilities where it employs IBT members. This grant of access will be limited by the conditions set forth in Article VIII, Section 11(e) of the ***Rules***. Further, by September 21, 1998, Anheuser-Busch will submit an affidavit to the Election Officer in which it acknowledges its compliance with this decision. Any failure to comply with this directive will be investigated and brought promptly to the attention of the United States District Court for the Southern District of New York for enforcement.

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, D.C. 20001, Facsimile (202) 624-3525. A copy of the protest must accompany the request for a hearing.

Sincerely,

Michael G. Cherkasky
Election Officer

MGC:mk

cc: Kenneth Conboy, Election Appeals Master
Barbara C. Deinhardt, New York City Protest Coordinator