

February 12, 1999

**VIA FIRST-CLASS MAIL**

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Redmond, WA 98052

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Schnader, Harrison, Segal & Lewis  
1600 Market Street  
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Scott Curley  
43741 SE 149<sup>th</sup> Street  
North Bend, WA 98045

Doug Lilley, Manager  
United Parcel Service  
18001 Union Hill Road  
Redmond, WA 98052

**Re: Election Office Case No. PR-395-LU174-PNW**

Gentlemen:

Daniel Scott, a member of Local Union 174 and a shop steward at United Parcel Service (“UPS”) in Redmond, Washington, 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 Scott Curley, also a member of Local Union 174 and a shop steward at the UPS Redmond, WA facility, and against UPS. Mr. Scott alleges that Mr. Curley engaged in campaign activity on behalf of the Hoffa Unity Slate (“Hoffa Slate”) at times when he was being paid by UPS and that UPS was aware of, but failed to address or to prevent this violation of the ***Rules***. The Election Officer deferred this protest for post-election review pursuant to his authority under Article XIV, Section 2(f)((2) of the ***Rules***.

This protest was investigated by Adjunct Regional Coordinator Paige Keys.

These matters are being considered in a post-election context. Therefore, the Election Officer will examine whether the violations “may have affected the outcome of the election.” As the Election Officer previously stated in Cheatem, Post-27-EOH (August 21, 1997),

[T]he Election Officer concludes that this election is presumed to be fair and regular. Therefore, in order to grant a post-election

protest, the evidence must overcome this presumption by demonstrating a violation of the **Rules** that may have affected the outcome of the election. This is consistent with DOL's standard for certification of supervised elections.

Id. at 105.

The **Rules** prohibit any member from campaigning "for him/herself or for any other candidate during time that is paid for by the Union or by any employer." Article XII, Sec. 1(b)(4). See also **Rules** Article VIII, Section 11(e) (right to campaign on employer property limited to parking lots, and campaigning cannot occur among working employees.) Moreover,

No employer may contribute, or shall be permitted to contribute, directly or indirectly, anything of value, where the purpose, object or foreseeable effect of the contribution is to influence, positively or negatively, the election of a candidate . . . . These prohibitions extend beyond strictly monetary contributions made by an employer and include contributions or use of employer stationery, equipment, facilities and personnel.

Id. at Article XII, Section 1(b)(1). Employers will be held liable for breaches of the foregoing provision irrespective of their knowledge of the violation. Id. At Article XII, Section 1(b)(10). ("Ignorance by a candidate, by a union and/or by an employer that union or employer funds or other resources were used to promote a candidacy shall not constitute a defense to an allegation of a violation of the **Rules**.")

The Election Officer's investigation revealed that Mr. Curley's start times throughout the month of October were inconsistent, in part, because Mr. Curley was assigned to certain work in addition to his regular driving duties. The two days in question were part of that assignment pattern. Mr. Curley was originally scheduled to start working at 8:10 a.m.. However, on October 15, 1998, Mr. Curley was observed engaging in campaign activity at 8:13 a.m. and on October 29, 1998, he was observed handing out Hoffa campaign literature at 8:12 a.m.. On both occasions while campaigning, Mr. Curley was standing outside the main employee entrance of building at the opposite end of the building from his worksite. Mr. Curley reported to work on both of these days at least one hour prior to his scheduled start time, but was not paid for this additional time.

Mr. Curley admits that he was campaigning at the times stated in the protest. He contends that he did not violate the **Rules** because he was not campaigning while on work time. UPS records show that Mr. Curley's start time on October 15, 1998 was changed from 8:10 a.m. to 8:20 a.m., i.e., his paid time on duty did not start until 8:20 a.m.. Accordingly, Mr. Curley argues, at 8:13 a.m. he was not campaigning on "company time." Mr. Curley's supervisor

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stated that the start time was changed on that date because Mr. Curley was late for work. Mr. Curley's time card for October 29, 1998 reflects a start time of 8:10 a.m.. The Election Officer credits the statements of the IBT members who observed Mr. Curley campaigning at 8:12 a.m. and finds that he was engaged in campaign activity on employer time on October 29, 1998.

The change of Mr. Curley's start time on October 15, 1998 is problematic. It appears from the inconsistent justifications of Mr. Curley, that the readjustment was made by the supervisor to accommodate Mr. Curley's campaign conduct, not because of UPS's schedule. If, on October 15, 1998, Mr. Curley was not technically campaigning on company time, it is because his supervisor adjusted the start time. For October 29, 1998, there is no dispute that Mr. Curley was campaigning on company time.

Doug Lilley, a manager at the UPS Redmond, WA facility, does not deny that he was notified of Mr. Curley's alleged infractions, but states that UPS took no action because management did not observe the violation. According to Mr. Lilley, start time discrepancies are not a problem unless the employee is blatantly attempting to "steal" time from UPS. He describes the observances of start times as a sort of honor code. The Election Officer credits Mr. Lilley's statements and finds that UPS's policy did not allow or condone campaigning on work time.

The Election Officer finds that, although Mr. Curley and UPS violated Article XII, Sections 1(b)(1) and 1(b)(4) of the **Rules**, these violations did not affect the outcome of the election. The smallest margin of victory of any candidate running on the Hoffa Slate was approximately 41,000 votes. The total IBT member population of UPS's Redmond, WA facility is approximately 360. The evidence shows that Mr. Curley campaigned on company time for a total of five minutes over the course of two days. The maximum number of IBT members that could have been exposed to and affected by Mr. Curley's violation is significantly smaller than the margin of victory. As a result, Mr. Curley's improper campaign activity, even if entirely successful at achieving its intended purpose could not, by itself, have affected the outcome of the election. 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

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Copies of the request for a 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

cc: Kenneth Conboy, Election Appeals Master  
Paige Keys, Adjunct Regional Coordinator