

**OFFICE OF THE ELECTION ADMINISTRATOR  
for the  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS**

<b>IN RE: TIM BUBAN,</b>	)	Protest Decision 2001 EAD 446
	)	Issued: September 10, 2001
	)	OEA Case No. PR082812MW
<b>Protestor.</b>	)	
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Tim Buban, a member of Local 200, filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2000-2001 IBT International Union Delegate and Officer Election (“*Rules*”) against Roundy’s Inc., an employer of IBT members.. He alleges that Roundy’s interfered with his right to campaign among IBT members at the Roundy’s facility in Pewaukee, Wisconsin, in violation of Article VII, Section 11(e) of the *Rules*.

Election Administrator representative Nancy Golen investigated the protest.

**Findings of Fact and Analysis**

Buban and two other IBT members that are supporters of the Tom Leedham Rank and File Power slate campaigned and distributed literature at the Roundy's employee parking lot located at 11300 W. Burleigh on August 27, 2001 beginning at approximately 4:45 p.m., in preparation for 5:30 p.m. shift change. While there, security repeatedly told them to leave the property and informed them that they had no right to be there. Kristy Ramsden, the supervisor on duty, repeated these warnings. According to Buban every few minutes a uniformed guard or Ramsden, as well as other unidentified representatives of management, would tell them to leave. Ramsden threatened to call police if they did not leave. Buban says this occurred at about 5:10 p.m., and that he told Ramsden that they would be gone by 5:35 p.m. when the shift change was over, which would probably be before the police arrived. Evidently, the police were not called. When Buban showed Ramsden the Election Administrator's advisory on parking lot access, she told Buban it was invalid and pointed out that the "contract" required advance notice before union representatives received access to Roundy’s premises. Buban and Ramsden then argued about which document took precedence. Meanwhile, the campaigners remained at the site and distributed literature through the shift change. They assert, however, that the repeated demands that they leave damaged their credibility and ability to campaign.

Buban further claimed he campaigned in the Roundy’s parking lot twice in March 2001, before delegate elections, and was told he should not be there, but was then allowed to stay without further interference. Buban says no advance notice was given before any of these campaign activities, and that in other election years he has campaigned in the Roundy’s parking lot without advance notice. When asked about

safety concerns, Buban stated that this had never been referenced and that he campaigned in a safe area reserved for smoking and not open to vehicles.

David Busch, Roundy's Corporate Vice President of Administration, initially claimed that Roundy's concern was for parking lot safety and that as a rule they required any visitors to the area to give advance notice by phone. In a letter dated September 7, 2001, Busch took the position that Roundy's can limit access by requesting advance notice of "the intent to distribute election information." He claims that in the past have followed this practice. Tom Schalk, Vice President of Distribution Milwaukee Division, repeated Busch's concern for parking lot safety.

We GRANT the protest. Employers cannot condition the right to access. *Terrazas*, P825 (July 11, 1996), *aff'd*, 96 EAM 217 (July 22, 1996) (employer impermissibly conditioned access on giving advance notice, reviewing campaign literature, and requiring campaigners to sign releases of liability). Roundy's has attempted to do so here, by claiming that it may insist on advance notice of campaign visits by campaigners.

Nor has Roundy's demonstrated special circumstances that might cause a modification of the right to parking lot access. *Compare Dunn*, P87 (August 4, 1995) (no violation where campaigner is asked to move to safer location); *Terrazas*, P831 (August 2, 1996) (no violation for employer to bar access to separate, secured area in which some employees park their vehicles where area was used for substantial work activity, including loading of freight and operation of heavy machinery). Here, the campaigners placed themselves in an area where there could be no claim of safety concerns.

We accordingly order Roundy's to cease and desist from denying access to IBT members to its employee parking area to campaign for IBT International office during hours when the parking lot is normally open to employees.

An order of the Election Administrator, unless otherwise stayed, takes immediate effect against a party found to be in violation of the *Rules*. *Lopez*, 96 EAM 73 (February 13, 1996).

Any interested party not satisfied with this determination may request a hearing before the Election Appeals Master within two (2) working days of receipt of this decision. The parties are reminded that, absent extraordinary circumstances, no party may rely upon evidence that was not presented to the Office of the Election Administrator in any such appeal. Requests for a hearing shall be made in writing, shall specify the basis for the appeal, and shall be served upon:

***Buban***, 2001 EAD 446  
September 10, 2001

Kenneth Conboy  
Election Appeals Master  
Latham & Watkins  
Suite 1000  
885 Third Avenue  
New York, New York 10022  
Fax: 212-751-4864

Copies of the request for hearing must be served upon all other parties, as well as upon the Election Administrator for the International Brotherhood of Teamsters, 727 15<sup>th</sup> Street NW, Tenth Floor, Washington, DC 20005 (facsimile: 202-454-1501), all within the time prescribed above. A copy of the protest must accompany the request for hearing.

William A. Wertheimer, Jr.  
William A. Wertheimer, Jr.  
Election Administrator

cc: Kenneth Conboy  
*2001 EAD 446*

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