



OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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Election Officer

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December 2, 1991

VIA UPS OVERNIGHT

Brendan F. Kaiser
Secretary-Treasurer
IBT Local Union 579
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Janesville, WI 53546-8999

John B. Wilson
4304 Oldwyck Drive
Janesville, WI 53546

Philip Zumster
c/o John B. Wilson
4304 Oldwyck Drive
Janesville, WI 53546

Jake's Restaurant/Bar
1951 Center Avenue
Janesville, WI 53546

Ron Carey
c/o Richard Gilberg, Esq.
Cohen, Weiss & Simon
330 West 42nd Street
New York, NY 10036-6901

Re: Election Office Case No. P-1122-LU579-NCE

Gentlemen:

A protest was filed with the Election Office pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*"). In his protest Brendan Kaiser alleges that by permitting a general purpose bulletin board in its truck stop to be used for the posting of Ron Carey campaign literature, Jake's Restaurant/Bar made an improper campaign contribution to the Carey Campaign in violation of the *Rules*. The Election Officer's investigation revealed the following.

Jake's Restaurant/Bar ("Jake's") is a truck stop located approximately half a mile from the Local Union 579 hall and in the vicinity of a number of employers of IBT members in Janesville, Wisconsin. Jake's is patronized by IBT members as well as members of the general public. In the entry foyer of Jake's are public telephones available for the use of its patrons. On either side of the public telephones are two bulletin boards. These bulletin boards are general purpose bulletin boards which are available for posting by Jake's patrons and their installation and use long preceded the 1991 IBT International Union delegate and officer election, the March 14, 1989 Consent Order and the *Rules*.

Throughout the delegate and International Officer campaigns IBT members have posted campaign literature on these general purpose bulletin boards.¹ R.V. Durham as well as Ron Carey literature, in addition to delegate candidate literature, has been posted on these boards. In addition, non-campaign literature, such as for sale signs and business cards, has been posted on the boards. The literature and notices, both campaign and non-campaign related are posted by patrons; Jake's takes no affirmative action with respect to posting on its bulletin boards, other than by providing the boards. Jake's has not prohibited the posting of campaign literature, nor has it discriminated among the literature posted by particular candidates or their supporters.

The Election Officer and the Independent Administrator have long recognized the principal that it is a violation of the *Rules* for an employer to deny access by IBT members to general purpose bulletin boards for the posting of campaign literature. See, e.g., In Re: Hall, 90-Elec. App.-90, see also, *Rules*, Article VIII, §10(d) ("No restrictions shall be placed upon candidates' or members' pre-existing right to use employer. . .bulletin board for campaign publicity"). Similarly, the *Rules* clearly provide that "no restrictions shall be placed upon candidates' or members pre-existing rights to solicit support, distribute leaflets or literature, conduct campaign rallies, hold fund raising events or engage in similar activities on employer. . .premises." *Id.* The *Rules* require however that access to such bulletin boards and facilities must be "equally available on the same basis to all candidates and members". *Id.* Implicit in these provisions of the *Rules* is the recognition that such non-discriminatory access does not constitute an employer contribution to a candidate in violation of the *Rules*. See, Article X, §1(a).

¹ The fact that these boards have been used for campaign posting for an extended period is acknowledged by Mr. Kaiser in his protest ("This has been on-going all the way back to pre-convention time"). Mr. Kaiser's protest therefore appears to be untimely. See, e.g., Article XI, §1(a)(1) ("Protests. . .must be filed within forty-eight (48) hours or such protests shall be waived")(emphasis in original).

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Cases that have been brought before the Election Officer concerning access to employer bulletin boards and facilities customarily involve employers of IBT members. While the employer at issue here, Jake's, is not an employer of IBT members, the same principles governing access to bulletin boards and facilities of employers of IBT members are applicable where, as here, the employer has voluntarily permitted all IBT members - without discrimination -- to post campaign literature.

The record with respect to the bulletin boards at issue here reflects that there is a consistent past practice with respect to the posting of campaign literature. Moreover, there is no evidence that Jake's has discriminated against any candidate or campaign or that the bulletin boards have not been available for posting by any candidate or campaign. In fact the record reflects that Durham as well as Carey literature has been posted on the boards.

The Election Officer concludes that providing access, on a non-discriminatory basis, to a general purpose bulletin board in the facility of an employer of IBT members does not constitute an employer campaign contribution in violation of the *Rules*. Under the circumstances present here, the Election Officer determines that similar access to a bulletin board maintained by an employer of other than IBT members does not constitute a campaign contribution in violation of the *Rules*.

On the basis of the forgoing, the instant protest is DENIED.

If any interested party is not satisfied with this determination, they may request a hearing before the Independent Administrator within twenty-four (24) hours of their 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 Independent Administrator Frederick B. Lacey at LeBoeuf, Lamb, Leiby & MacRae, One Gateway Center, Newark, New Jersey 07102-5311, Facsimile (201) 622-6693. Copies of the request for hearing must be served on the parties listed above, as well as upon the Election Officer, IBT, 25 Louisiana Avenue, N.W., Washington, D.C. 20001, Facsimile (202) 624-8792. A copy of the protest must accompany the request for a hearing.

Very truly yours,



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cc: Frederick B. Lacey, Independent Administrator
Barbara Zack Quindel, Regional Coordinator