

October 23, 1996

VIA UPS OVERNIGHT

David Green
Teamsters Local Union 7
3330 Miller road
Kalamazoo, MI 49003

Stand Up for Teamsters Slate
c/o Leroy Ellis, Jr.
10733 S. Western Avenue
Chicago, IL 60643

Re: Election Office Case No. P-1067-LU7-MGN

Gentlemen:

David Green, a member and officer of Local Union 7, filed a pre-election protest pursuant to Article XIV, Section 2(b) of the *Rules for the IBT International Union Delegate and Officer Election ("Rules")* against Leroy Ellis, a member of Local Union 705 and a candidate for International vice president on the Stand Up for Teamsters slate, and the Stand Up for Teamsters slate. Mr. Green alleges that on October 8, 1996, Mr. Ellis distributed campaign literature on the premises of Comstock Michigan Fruit ("Comstock") to IBT members while they were working, in violation of the *Rules*.

The charged parties respond that Mr. Ellis entered the employer's premises to drop off campaign literature in the break room after the steward informed him that literature for presidential candidates Ron Carey and James P. Hoffa was present there.

Regional Coordinator William A. Wertheimer, Jr. investigated this protest.

The facts of this case are in dispute. Mr. Green claims that on October 8, 1996,

Dennis Thomas, the chief steward at Comstock, observed Mr. Ellis standing near the break room in Building 2 of the Comstock facility. Mr. Ellis informed Mr. Thomas that he was a candidate for International vice president and that he wished to distribute campaign literature on the premises. After receiving a copy of the literature, Mr. Thomas called Mr. Green at Local Union 7, who stated that Mr. Ellis should have first checked with him before campaigning at Comstock. When Mr. Thomas returned to relay this information to Mr. Ellis, he found that the latter had already left. Mr. Thomas subsequently learned that Mr. Ellis had left campaign literature in the break room in Building 1.

Mr. Ellis offers a different version of events. He states that he telephoned Local Union 7 prior to October 8 to inform the local union that he would be campaigning in the area on that date.¹ When Mr. Ellis arrived at Comstock on October 8, he began distributing literature in the parking lot.² According to Mr. Ellis, one of the employees went into the building to get the steward, Mr. Thomas. When Mr. Thomas came out to the parking lot, Mr. Ellis identified himself to Mr. Thomas and asked Mr. Thomas if he would place the Stand Up for Teamsters campaign literature in the break room, if there was campaign literature from the other candidates in that location. Mr. Thomas responded that Carey and Hoffa campaign literature had been placed in the break room. Mr. Thomas then told Mr. Ellis that he could accompany him to the break room to drop off his campaign literature. Mr. Ellis states that he went with Mr. Thomas to the break room, a distance of about 20 or 30 feet from the parking lot, dropped off his literature, and then left the premises.

Article VIII, Section 11(d) of the *Rules* protects pre-existing rights to access employer premises:

[N]o 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.

This provision applies to non-employees if there is a pre-existing right. Rud, P-766-LU320-NCE (May 23, 1996). Even if campaigning is permitted, it cannot take place during working hours. See Article VIII, Section 11(a).

¹Mr. Ellis does not recall to whom he spoke at Local Union 7.

²The *Rules*, at Article VIII, Section 11(e), permit campaigning by candidates for International office "in any parking lot used by Union members to park their vehicles in connection with their employment."

The Election Officer credits the statements of Mr. Ellis. As a candidate for Inter-national office, Mr. Ellis had the right to campaign on October 8, 1996 in the Comstock parking lot.³ Mr. Ellis inquired of the steward whether literature for the other candidates had been placed in the break room. Steward Thomas replied in the affirmative and invited Mr. Ellis to accompany him to the break room to drop off his campaign literature. The Election Officer finds that it was reasonable under the circumstances for Mr. Ellis to assume that Comstock allowed International candidates to access its break room for the purpose of leaving campaign literature. Moreover, Mr. Ellis entered the break room only to drop off literature. There is no evidence that he otherwise remained in the facility to campaign.

While Mr. Green asserts that Mr. Ellis entered the Comstock facility and “passed out campaign literature to Teamster members while they were working,” there is no evidence this occurred.

For the foregoing reasons, the protest is DENIED.

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

Sincerely,

Barbara Zack Quindel
Election Officer

³While Mr. Ellis states that he notified Local Union 7 in advance of his visit to Comstock, the Election Officer notes that he was not required to do so under the **Rules**.

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cc: Kenneth Conboy, Election Appeals Master
William A. Wertheimer, Jr., Regional Coordinator