

November 1, 1996

**VIA UPS OVERNIGHT**

Rebecca Clemerson  
9105 Fairridge Drive  
Louisville, KY 40229

Jerry T. Vincent, Secretary-Treasurer  
Teamsters Local Union 783  
7711 Beulah Church Road  
Louisville, KY 40228

Tom Stopinski, Personnel Manager  
President's Baking Company  
2287 Ralph Drive  
Louisville, KY 40216

R. Brian Struble, Jr.  
Arnold & Anderson  
1200 Peachtree Center Cain Tower  
229 Peachtree Street, N.E.  
Atlanta, GA 30303

**Re: Election Office Case No. P-1104-LU783-SCE**

Gentlepersons:

A pre-election protest was filed pursuant to Article XIV, Section 2(b) of the ***Rules for the 1995-1996 IBT International Union Delegate and Officer Election ("Rules")*** by Rebecca Clemerson, a member of Local Union 783. Ms. Clemerson alleges that she was terminated from her position at President's Baking Company for campaigning in the employer's employee parking lot, in violation of the ***Rules***.

Tom Stopinski, personnel manager at President's Baking Company, states that the employer has a strict no-campaigning rule that forbids campaigning in the employee lot. He states that Ms. Clemerson was terminated because she had been previously warned not to campaign on the premises. According to Mr. Stopinski, employees must leave the premises after the end of their shifts. Mr. Stopinski has subsequently been informed of IBT members' limited right-of-access to employee parking lots to campaign, but states that the Election Officer has no authority to force the employer to acknowledge this right.

Adjunct Regional Coordinator Joe F. Childers investigated the protest.

The investigation revealed that on October 17, 1996, Ms. Clemerson campaigned in the employee parking lot of President's Baking after the end of her shift. She and others leafleted

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vehicles and passed out campaign literature in support of the candidacy of Ron Carey, IBT general president and a candidate for reelection, in the lot and at the gate leading from the lot to the road. Ms. Clemerson was not on work time when she campaigned.

The next day, Ms. Clemerson was called to Mr. Stopinski's office, where Mr. Stopinski informed her that she was terminated because she had been previously warned not to pass out campaign material. He stated that her campaigning in the lot the previous day amounted to insubordination.

Article VIII, Section 11(e) of the **Rules** creates a limited right-of-access to IBT members and candidates to distribute literature and seek support for their campaign in any parking lot used by union members to park their vehicles in connection with their employment. While "presumptively available," this right is not without limitations. It is not available to any employee on working time and candidates and their supporters cannot solicit or campaign to employees who are on working time. It is also restricted to campaigning that will not materially interfere with an employer's normal business activities.

In approving the **Rules**, United States District Court Judge David N. Edelstein considered an objection to the right-of-access to employer premises filed by Pepsi-Cola Company ("Pepsi"). Pepsi contended that the rule contravenes the Supreme Court's ruling in Lechmere, Inc. v. NLRB, 502 U.S. 527 (1992). The Court rejected this argument and held as follows:

[T]his Court's authority to enforce the Consent Decree extends not only to the parties to the Consent Decree but also to employers who "are in a position to frustrate the implementation of [the Consent Decree] or the proper administration of justice." . . . [T]he only way to ensure that each candidate has a meaningful opportunity to meet with the electorate and to explain his or her views is to provide candidates with a right of access to employer premises.

U.S. v. IBT, supra, at 40. (Citations omitted.) Thus, the Court has already ruled that assertions of a lack of authority by the Election Officer to enforce employer compliance with the **Rules**, such as the employer makes here, are without merit.

The investigation demonstrated that Ms. Clemerson was terminated from her employment for exercising a protected right under the **Rules**.

In addition, Article VIII, Section 11(f) of the **Rules** prohibits any retaliation against anyone by an employer or its agents for exercising any right guaranteed by the **Rules**.<sup>1</sup> The employer's termination of the protester, therefore, constitutes a serious violation of the **Rules**. Retaliatory termination by an employer is chilling to the democratic process embodied in the **Rules**.

The investigation further revealed that President's Baking has prohibited all campaigning on its premises in the employee parking lot. Such a restriction is impermissible under the **Rules**. While the employer may place certain restrictions on the scope of the campaign activities taking place in the parking lot, it may not prohibit all such activity.

After communicating with a representative of the Election Officer, the employer has agreed to reinstate Ms. Clemerson to her former position and shall make her whole for all lost wages and fringe benefits.

Accordingly, the protest, as it concerns Ms. Clemerson's termination, is RESOLVED. However, the employer has prevented campaigning in its employee parking lot, in violation of the **Rules**. For the foregoing reasons, the protest, as it relates to impermissible interference with campaigning rights, is GRANTED.

When the Election Officer determines that the **Rules** have been violated, she "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.

In this case, both the employer and the local union have demonstrated confusion as to the rights of members to campaign at work sites. In its response to the Election Officer, the local union reiterated the employer's prohibition of campaigning and requested a clarification about the relationship between the facts of the present protest and the limited right guaranteed in the **Rules**. Accordingly, the Election Officer directs the following:

1. The Election Officer directs the employer to permit campaigning in its employee parking lot. This grant of access will only be limited by the conditions set forth in Article VIII, Section 11(e) of the **Rules**.

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<sup>1</sup>Article VIII, Section 11(f) states:

Retaliation or threat of retaliation by the International Union, any subordinate body, any member of the IBT, any employer or other person or entity against a Union member, officer or employee for exercising any right guaranteed by this or any other Article of the **Rules** is prohibited.

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2. In order that the employees of President's Baking are fully advised of their rights, the Election Officer further directs that within one (1) day of the date of this decision, Mr. Stopinski will sign and post the "Notice to President's Baking Employees" on the union bulletin board provided at the work site by the employer. The notice will remain posted, unaltered and unobstructed, for thirty (30) consecutive days.

3. Within two (2) working days of receipt of this decision, the employer will submit an affidavit to the Election Officer in which it acknowledges its compliance with this decision.

4. In order that members of Local Union 783 are fully advised of their rights, the Election Officer directs that, within one (1) day of the date of this decision, the local union will copy and post the "Notice to Members of Local Union 783" on all bulletin boards at the local union's offices. The notice will remain posted, unaltered and unobstructed, for thirty (30) consecutive days.

5. Within two (2) working days of receipt of this decision, the local union will submit an affidavit to the Election Officer in which it acknowledges its compliance with this decision.

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, 1996).

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,

Barbara Zack Quindel  
Election Officer

cc: Kenneth Conboy, Election Appeals Master  
Joe F. Childers, Adjunct Regional Coordinator

## NOTICE TO PRESIDENT'S BAKING EMPLOYEES

IBT members have the right to campaign for or against candidates in the International officer election. President's Baking will permit campaigning in the employee parking lot at this facility. President's Baking will not interfere with the exercise of rights guaranteed by the *Election Rules*.

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Tom Stopinski, Personnel Manager  
President's Baking Company

*This is an official notice which must remain posted for 30 consecutive days and must not be defaced or altered in any manner or be covered with any other material.*

*Approved by Barbara Zack Quindel, IBT Election Officer.*

## NOTICE TO MEMBERS OF LOCAL UNION 783

IBT members have the right to campaign for or against candidates in the International officer election. The *Election Rules* establish a limited right-of-access for IBT members to campaign in the employee parking lots at work sites where IBT members are employed. This right is not available to any employee on work time, and candidates and their supporters cannot solicit or campaign to employees who are on work time. It is also restricted to campaigning that will not materially interfere with an employer's normal business activities. Subject to these limitations, however, an employer may not prevent campaigning for International officer candidates in its employee parking lot.

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Barbara Zack Quindel  
Election Officer

*This is an official notice which must remain posted for 30 consecutive days and must not be defaced or altered in any manner or be covered with any other material.*