

November 27, 1996

VIA UPS OVERNIGHT

Johnny Gabriel
7441 Paul Court
Riverdale, GA 30274

T.C. Bundrant
427 Ollis Bowers Hill Road
Kingsport, TN 37664

Ron Carey, General President
International Brotherhood of Teamsters
25 Louisiana Avenue, N.W.
Washington, DC 20001

John Sullivan, Associate General Counsel
International Brotherhood of Teamsters
25 Louisiana Avenue, N.W.
Washington, DC 20001

Re: Election Office Case No. P-1265-LU728-SEC

Gentlemen:

Johnny Gabriel, a member of Local Union 728, 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")*** alleging that T.C. Bundrant, a Consolidated Freightways ("CF") employee, harassed him on November 13, 1996 for his support of James P. Hoffa, a candidate for general president, and that General President Ron Carey, who was present at the time, did nothing to stop the harassment.

Mr. Bundrant denies harassing Mr. Gabriel and states that he was only campaigning.

Regional Coordinator J. Griffin Morgan investigated this protest.

The investigation revealed that on November 13, 1996, Mr. Gabriel saw several people by the entrance gate to the CF facility in Atlanta, Georgia campaigning for Mr. Carey. Mr. Gabriel states that as he walked toward the gate he was greeted by Business Agents Ron Smith, Bob Stanford and Ken Lemmon, with whom he shook hands and spoke.

Mr. Gabriel states that as he entered the gate, he was approached by Mr. Bundrant, who noticed that Mr. Gabriel was wearing a Hoffa hat and buttons. Mr. Gabriel states that

Mr. Bundrant asked him whether he had seen CNN on Sunday night.¹ When Mr. Gabriel responded, "I sure did," Mr. Bundrant stated something to the effect of "I can't believe you are wearing those buttons and that hat."

Mr. Gabriel admits, and witnesses corroborate, that he started yelling, "I have the right to support any candidate I want," "You have no right to say anything to me about who I am supporting," and "You have no right to comment on my Hoffa stuff."

Don Scott, president of Local Union 728, was approximately 15 to 20 feet away from Messrs. Bundrant and Gabriel and walked towards them to ask what was going on. Mr. Gabriel replied, "I have always worked with you and I have always been a good steward. I can support whoever I want to. He asked me if I watched CNN. He has no business asking me that. Nobody is going to tell me what I am going to wear or who to support." Mr. Scott attempted to calm Mr. Gabriel down.

Mr. Gabriel entered the work site. There is no evidence that Mr. Bundrant attempted to physically intimidate Mr. Gabriel.

Article VIII, Section 11(f) of the **Rules** states that:

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.

This section is violated when members engage in physically or verbally aggressive behavior that threatens actual harm. Passo, P-469-LU705-CHI et seq. (February 29, 1996) (finding intent to provoke physical confrontation violates **Rules**), aff'd in relevant part, 96 - Elec. App. - 124 (KC) (March 13, 1996). The section does not proscribe "the natural discourse that arises as a result of campaign-related activities," even if heated. Furst, P-949-LU430-PNJ (October 9, 1996) ("heated discussion" between protester and charged party does not violate **Rules**). See Dunn, P-110-LU25-BOS (July 28, 1995), aff'd, 95 - Elec. App. - 8 (KC) (August 21, 1995) (local union president did not violate **Rules** by following, hovering near and blocking path of campaigning member); Corriea, P-930-LU150-CSF (September 12, 1996) (fact that charged party, much taller than protester, stood over latter's desk, did not constitute violation, as charged party "was not aggressive or violent, nor did he threaten aggression or violence in any way").

¹On November 10, 1996, CNN broadcast a program covering the International officer election that, in parts, was critical of Mr. Hoffa.

The Election Officer finds that although Mr. Gabriel's discussion with Mr. Bundrant became heated, Mr. Bundrant's actions did not rise to the level of retaliation. Mr. Bundrant exercised his right to "support or oppose" a candidate and attempted to convince Mr. Gabriel of his political views. Such conduct is protected under the **Rules**.

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

cc: Kenneth Conboy, Election Appeals Master
J. Griffin Morgan, Regional Coordinator