

April 10, 1996

VIA UPS OVERNIGHT

Richard Lopez
606 N. 6th Avenue
Maywood, IL 60513

Walter Perkins
Teamsters Local Union 743
300 S. Ashland Avenue
Chicago, IL 60607

Eddie Kornegay, Trustee
Teamsters Local Union 743
300 S. Ashland Avenue
Chicago, IL 60607

Re: Election Office Case No. P-456-LU743-CHI

Gentlemen:

Richard Lopez, a member of Local Union 743, 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")*. The protester alleges that he was threatened by Walter Perkins, the staff photographer for Local Union 743, for the exercise of rights guaranteed by the *Rules*. He alleges that he was handing out leaflets in front of the Milk Drivers' Hall in Chicago, where Local Union 743 business agents were meeting to choose a slate of delegates, when Mr. Perkins, on his way to the meeting, approached him and threatened him. The protester also alleges that Local Union 743 Trustee Eddie Kornegay accepted a union contribution, in violation of the *Rules*, by using the Milk Drivers' Hall for the meeting without charge.

Mr. Perkins admits that the alleged altercation took place. He states that the protester provoked him by using profanity and threatening that Mr. Perkins would lose his job if candidates supported by the protester were elected to local union office. Mr. Perkins states that he replied to Mr. Lopez that he would "kick his ass," after which he walked away.

Sylvester Cail, assistant to Mr. Kornegay, denies that the use of the hall was a campaign contribution. Mr. Cail states that Mr. Kornegay entered into a contract providing that he could use an auditorium in the Milk Drivers' Hall for regular slate meetings for a monthly rental of \$800.

Adjunct Regional Coordinator Dennis M. Sarsany investigated this protest.

1. Alleged Retaliation

The protester is a former employee of Local Union 743 who was dismissed when the IBT placed the local union in trusteeship. He is a supporter of the Take Back Local 743 slate, a group which is opposed to the trusteeship currently imposed upon Local Union 743. Mr. Perkins is a local union employee and a supporter of the opposition Movement Towards Members ("MTM") slate.

On Saturday, February 10, 1996, Local Union 743 business agents held a meeting in the Milk Drivers' Hall to choose a slate of candidates for delegate in the Local Union 743 delegate election. On the sidewalk outside of the building, the protester and several other members handed leaflets to persons entering the building to attend the meeting.

The leaflet distributed by the protester and others on February 10, 1996 referred to a Local Union 743 staff meeting on January 27, 1996. The leaflet alleged that at that meeting, Mr. Kornegay had threatened his staff that they would lose their jobs if they did not support the re-election of General President Ron Carey.¹ The leaflet included the phone number of an investigator from the Independent Review Board, which the protester states was provided in case a threat was made at the staff meeting at the Milk Drivers' Hall that was similar to the threat allegedly made by Mr. Kornegay on January 27, 1996.

There is a history of hostile relations between Mr. Perkins and the protester, stemming from Mr. Perkins' support for the trusteeship and the protester's opposition to the trusteeship. When Mr. Perkins approached the Milk Drivers' Hall to attend the February 10, 1996 meeting of local union staff, one of the leafleters handed Mr. Perkins a leaflet. The protester called out to Mr. Perkins, "You'd better milk it for all it's worth. You have only two or three months here, because we are going to fire your ass when we get in." Mr. Perkins threw the leaflet on the ground, went up to the protester and yelled, "I won't get down to your gutter level. Get out of here! I'm tired of this shit! I'm going to kick your ass. I'll kill you."

¹The Election Officer considered this allegation in Walston, P-370-LU743-CHI (February 29, 1996). She found there that Mr. Kornegay had not threatened his staff as alleged.

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Mr. Perkins then walked away from the protester and entered the union hall. The protester and the other persons leafleting went to the nearest police station, where the protester swore out a warrant for the arrest of Mr. Perkins.²

²There was no police investigation. On the hearing date for the charge, Mr. Perkins requested a jury trial so the matter has been scheduled for a later date.

The *Rules*, at Article VIII, Section 11(f), provide, "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." To sustain a charge of retaliation, there must be evidence which expressly or inferentially connects the conduct which is alleged to be improper to activity protected by the *Rules*. See Giacumbo, P-100-IBT-PNJ (October 13, 1995).

The Election Officer finds that the altercation between the protester and Mr. Perkins outside the Milk Drivers' Hall on February 10, 1996 involved conduct protected by the *Rules*. The altercation may have been fueled by the protester's taunt to Mr. Perkins that the next group of local union officers will terminate him. However, the Election Officer finds that the protester was outside of the Milk Drivers' Hall on February 10 to express his opposition to the slate of candidates for delegate aligned with the trusteeship, and that Mr. Perkins was angered by that opposition. The altercation was precipitated by the leaflet handed to Mr. Perkins which sought to remind Local Union 743 staff of charges made in a protest filed against Mr. Kornegay, pursuant to the *Rules*. The protester's right to oppose the slate in formation on February 10, 1996 and his right to file a protest are both protected by the *Rules*.

Having found that protected rights under the *Rules* are implicated here, the Election Officer must determine whether Mr. Perkins, in making his statement to Mr. Lopez, engaged in conduct prohibited by the *Rules*. The right of IBT members to campaign cannot be interfered with by threats, intimidation or coercion. The Election Officer has unequivocally stated that "[v]iolence . . . has absolutely no place in the conduct of fair, honest and open election, pursuant to the Election *Rules*." Smith, P-189-LU480-SEC (January 21, 1991), aff'd, 91 - Elec. App. - 51 (SA) (January 29, 1991). However, a "heated" discussion involving IBT members or the mere "physical presence" of one member in relation to another does not violate the *Rules*. 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 the path of campaigning member.) Particularly, in light of the ongoing animosity between the parties and the heated election campaign in Local Union 743, the statement "I'll kill you" by Mr. Perkins to Mr. Lopez constitutes a threat of physical violence which cannot be tolerated under the *Rules*. See Kelly, P-600-LU705-CHI, et seq. (March 27, 1991) (An aggressive threat to "kick their ass" made in a menacing manner violated the Rules.); Schweitzer, P-672-LU896-CLA (March 25, 1991) aff'd, 91 - Elec.

App. - 118 (SA) (April 3, 1991). (The statement "If you mess with my people I'll go in and get my boys and we'll smash some heads" violated the Rules.) Although Mr. Perkins took no action, his

threat of violence in the context presented here violated the *Rules*. There is no evidence that Mr. Kornegay directed or condoned Mr. Perkins' actions.

2. Alleged Campaign Contribution

The Milk Drivers' Hall is owned by the Local 753 Vendors' Pension Building Trust ("Trust"). The investigation discloses that Mr. Perkins negotiated to lease office space in the Milk Drivers' Hall for the rate of \$800 per month, renewable monthly. The lease of office space in the building entitled the lessor to use of the auditorium where the meeting was held on February 10, 1996. After the altercation on February 10, 1996, the Trust refused to continue with the lease agreement and, instead, billed Mr. Perkins for \$150 the use of the meeting hall on February 10, 1996. The invoice has not yet been paid. Local Union 754 Secretary-Treasurer John Thomas, speaking on behalf of the Trust,³ advises that \$150 is the rate uniformly charged for one-time use of the auditorium in the Milk Drivers' Hall.

The *Rules*, in Article XII, Section 1(b)(2), prohibit a union from contributing, directly or indirectly, anything of value where the purpose, object or foreseeable effect of the contribution is to influence, positively or negatively, the election of a candidate. One example of a campaign contribution in the *Rules* is the use of building or office space.

The purchase of goods or services by a member does not constitute a campaign contribution by the vendor if the terms of the purchase are commercially reasonable. See In Re: Gilmartin, 95 - Elec. App. - 45 (KC) (December 18, 1995); Carter, P-457-LU550-NYC (March 7, 1996); Gilberg, P-284-IBT, aff'd in pertinent part, 91 - Elec. App. - 194 (SA) (October 2, 1991). In Gilberg, the Election Officer advised:

In situations where there is more than one producer of an item, the commercially reasonable price is set by the market for that item. The determination of whether the terms of sale are commercially reasonable will also depend on whether the vendor offers similar terms to other purchasers of his product.

Here, there is evidence that the rate of \$150 for the use of the meeting hall at the Milk Drivers' Hall on February 10, 1996 is a commercially reasonable rate. Accordingly, the Election Officer finds that the arrangement between the Trust and Mr. Perkins for use of the hall does not violate the

³The Local Union 754 officer is a trustee of the Trust because Local Union 753 has merged with Local Union 754.

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Rules. The Election Officer notes that pursuant to the invoice from the Trust, payment is due on May 3, 1996.

Accordingly, the protest is GRANTED as to the retaliation and DENIED in all other respects.

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 an attempt to monitor the ongoing animosity between Mr. Perkins and Mr. Lopez, the Election Officer imposes the following: Mr. Perkins is hereby ordered to cease and desist from threatening Mr. Lopez. In addition, for the duration of the delegate election campaign, Mr. Perkins is ordered not to come within 20 feet of Mr. Lopez at any time. In addition, Mr. Lopez is ordered to cease and desist from directing any campaign activities to Mr. Perkins, including talking to him about the election in any manner. Mr. Lopez is similarly directed to not come within 20 feet of Mr. Perkins at any time during the delegate election campaign.

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, 1966).

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,

Richard Lopez
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Barbara Zack Quindel
Election Officer

cc: Kenneth Conboy, Election Appeals Master
Dennis M. Sarsany, Adjunct Regional Coordinator