

April 29, 1996

VIA UPS OVERNIGHT

Bruce Blake  
1101 West Road  
La Habra Heights, CA 90631

Paul Kenny  
Teamsters Local Union 630  
750 S. Stanford Avenue  
Los Angeles, CA 90021

Re: Election Office Case No. P-712-LU630-CLA

Gentlemen:

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 Bruce Blake, a member of Local Union 848. The protester alleges that Local Union 630 Business Representative Paul Kenny harassed him because of his political support for General President Ron Carey and his participation in Teamsters for a Democratic Union ("TDU"). Mr. Blake also alleges that Local Union 630 business representatives have displayed campaign bumper stickers on union vehicles while conducting union business with employers.

In response, Mr. Kenny states that Mr. Blake's protest is untimely. As to the merits, Mr. Kenny states that the actions protested by Mr. Blake are unconnected to the Local Union 630 delegate election and, thus, are beyond the Election Officer's jurisdiction.

This protest was investigated by Regional Coordinator Dolly M. Gee.

While several individuals were interviewed by the Election Officer's representative, accounts varied as to the events precipitating this protest. The Election Officer's investigation reveals that Mr. Blake is an employee and a shop steward at Certified Grocers of California ("Certified"). On April 2, 1996, Mr. Blake met with Certified Transportation Superintendent Ken Minadeo. Mr. Minadeo told Mr. Blake that he had received reports that Mr. Blake was advising union members represented by Local Union 630 that they should report grievances either to him or to Raul Rodriguez, a Local Union 630 shop steward, but not to Local Union 630 Shop Steward Larry Jimenez. Mr. Blake denies having so advised Local Union 630 members and states that the source of this misinformation is Mr. Kenny.<sup>1</sup> Mr. Blake claims that Mr. Kenny disseminated this untruth because of his political opposition to Mr. Kenny and that his actions have placed Mr. Blake's job in jeopardy.

### 1. Timeliness

Article XIV, Section 2(b) requires protesters to file "within two (2) working days of the day when the protestor becomes aware or reasonably should have become aware of the action protested." The short time limits are important to ensuring that alleged violations of the *Rules* are quickly brought to the attention of the Election Officer in order to afford the greatest opportunity for applying an effective remedy if a violation is found. Here, Mr. Blake learned of the alleged *Rules* violation on April 2, 1996, but waited four days to file this protest. Nevertheless, the Election Officer has not treated time limits as an absolute jurisdictional requirement, but rather as a prudential restriction. Given the heightened concern over allegations of retaliation activity, the Election Officer finds it will better serve the underlying purposes of the *Rules* to resolve the merits of this protest.

### 2. Jurisdiction

Mr. Kenny also contends that his actions are unconnected to the Local Union 630 delegate election. Although the delegate elections are completed in Local Union 630, the Election Officer has jurisdiction over retaliation against a "Union member, officer or employee for exercising any right guaranteed by this or any other Article of the *Rules* . . ." Article VIII, Section 11(f). This includes the right of Mr. Blake to support Mr. Carey for general president or to support or oppose other candidates for International office. As alleged, Mr. Kenny took actions against Mr. Blake which threatened his job due to his support of Mr. Carey. The Election Officer, therefore, has jurisdiction over this protest.

### 3. Allegation of Retaliation

<sup>1</sup>Mr. Kenny claims that the source of his information was Mr. Jimenez. Mr. Jimenez states that he was told of Mr. Blake's alleged statements from Ben Garcia, a member of Local Union 630. Mr. Garcia states that Mr. Blake never said anything to him regarding Mr. Jimenez and contends that the incident is a misunderstanding.

Article VIII, Section 11(a) of the **Rules** states that “[a]ll Union members retain the right to participate in campaign activities, including the right to run for office, to support or oppose any candidate, to aid or campaign for any candidate . . .” Article VIII, 11(f) of the **Rules** prohibits any retaliation against anyone by the Union or its agents for exercising any right guaranteed by the **Rules**. 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.

To demonstrate retaliation, a protester must show that conduct protected by the **Rules** was a motivating factor in the adverse decision or conduct in dispute. The Election Officer will not find retaliation if she concludes that the union officer or entity would have taken the same action even in the absence of the protester’s protected conduct. Gilmartin, P-032-LU245-PNJ (January 5, 1996), aff’d, 95 - Elec. App. - 75 (KC) (February 6, 1996). See Leal, P-051-IBT-CSF (October 3, 1995), aff’d, 95 - Elec. App. - 30 (KC) (October 30, 1995); Wsol.

Here, the Election Officer finds the evidence insufficient to demonstrate that Mr. Kenny reported Mr. Blake’s alleged actions to Certified in retaliation for his exercise of political rights protected by the **Rules**. The protester has not demonstrated that Mr. Blake’s support of Mr. Carey was a motivating factor in the protested conduct. The Election Officer further notes that Mr. Blake has not been threatened with or disciplined by Certified or Local Union 630. Therefore, the **Rules** have not been violated.

### 3. Allegation Concerning Bumper Stickers

Local Union 630 Business Agent Robert Rios admits that he drove a car with a bumper sticker in support of James P. Hoffa, a candidate for general president, while conducting union business at Certified. Mr. Rios owns the vehicle, but is reimbursed by the local union for mileage and maintenance. Mr. Rios has since removed the bumper sticker from the vehicle.

Article VIII, Section 11(b) of the **Rules** preserves a union officers “right to participate in campaign activities . . .” Section 11(c) generally prohibits the use of union resources to campaign. The Election Officer’s *Advisory on Wearing of Campaign Buttons and Other Emblems* (“Advisory”) prohibits a union officer or agent from wearing campaign paraphernalia “during such time they [are] representing the Union in relations with unrelated third parties.”

Although cited by the protester, the Election Officer finds that the Advisory only addresses the display of campaign emblems on a person’s body.

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The Election Officer previously has determined that use of a personal vehicle by a union officer, even when the officer is reimbursed by the union for its use, does not constitute a use of union resources. "[T]he subsidy does not convert his personal car into a 'Union car.'" See e.g., In Re: Gregory, 91 - Elec. App. - 135 (SA) (April 29, 1991). Displaying a campaign sign in a personal vehicle, even if the vehicle is used for union business, does not violate the *Rules*. See In Re: Carr, 91 - Elec. App. - 143 (SA) (May 2, 1991). Thus, Mr. Rios did not use union resources to campaign in violation of the *Rules*. The right to campaign will not be read to restrict the placing of a bumper sticker on a personal vehicle which is utilized to conduct union business.

In consideration of the foregoing, Mr. Blake's 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  
Dolly M. Gee, Regional Coordinator