

July 9, 1996

VIA UPS OVERNIGHT

Robert Kirkpatrick  
9352 Candlelight Street  
Apple Valley, CA 92308

Jack Cox, Secretary-Treasurer  
Teamsters Local Union 572  
450 Carson Plaza Drive  
Carson, CA 90746

Doug Rosenow  
Ralph's Grocers Inc.  
1100 W. Artesia Boulevard  
Compton, CA 90220

Re: Election Office Case No. P-787-LU572-CLA

Gentlemen:

A pre-election protest was filed pursuant to Article XIV, Section 2(b) of the *Rules for the IBT International Union Delegate and Officer Election ("Rules")* by Robert Kirkpatrick, a member of Local Union 70. Mr. Kirkpatrick alleges that employer Ralph's Grocery has refused to allow him to campaign in the work-site parking lot, in violation of the *Rules*. He further alleges that Jack Cox, secretary-treasurer of Local Union 572, has been allowed to post campaign material on bulletin boards in the facility while others have not been granted equal access.

Regional Coordinator Dolly M. Gee investigated the protest.

Ralph's Grocery initially stated that the protester had no right of access to its premises, including the parking lot, in order to campaign. Despite discussions with Regional Coordinator Gee in an attempt to resolve this matter, Ralph's Grocery has provided nothing to indicate that the employer's position has changed. Both the employer and Local Union 572 state that there was no pre-existing right to post campaign material on the union bulletin boards at the employer's facility.

1. Parking Lot Access

The parties do not dispute that the employer refused to allow Mr. Kirkpatrick to campaign in the parking lot of Ralph's Grocery's Compton, California warehouse facility on May 29, 1996.

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 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. 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.)

As a result, the employer's denial of access is an obvious violation of the *Rules*. To this date, the employer has not granted the protester access to its employee parking lot.

2. Posting on Union Bulletin Boards

The protester did not provide, nor did the investigation disclose, any evidence to support his allegation that Mr. Cox posted campaign materials on the union bulletin boards at Ralph's Grocery's Compton warehouse facility. The investigation failed to disclose that any campaign material has been posted on the union bulletin boards at that facility.

Article XIV, Section 1 of the *Rules*, however, places the burden on the complainants "to present evidence that a violation has occurred." Further, the Election Appeals Master has stated that the protester bears the initial burden of proof to offer evidence substantiating his allegations. In Re:

Robert Kirkpatrick  
July 9, 1996  
Page 3

Chentnik, 95 - Elec. App. - 52 (KC) (January 10, 1996). Mr. Kirkpatrick has failed to provide any evidence to substantiate his allegation that Mr. Cox posted campaign material at the work site.

For the foregoing reasons, the protest, as it concerns access to the employer's parking lot to campaign, is GRANTED, and is 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 these circumstances, the Election Officer **directs Ralph's Grocery to immediately grant access rights to nonemployee IBT members for campaign purposes to the parking lot used by local union members.**

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, 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

Robert Kirkpatrick

July 9, 1996

Page 4

cc: Kenneth Conboy, Election Appeals Master  
Dolly M. Gee, Regional Coordinator