

September 25, 1996

**VIA UPS OVERNIGHT**

Robert H. Newhouse  
6486 S. Saulsbury Street  
Littleton, CO 80123

Executive Board  
Teamsters Local Union 435  
2941 W. 19th Avenue  
Denver, CO 80204

Roman Garcia, Secretary-Treasurer  
Teamsters Local Union 435  
2941 W. 19th Avenue  
Denver, CO 80204

**Re: Election Office Case No. P-902-LU435-RMT**

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 Robert H. Newhouse, a member of Local Union 435. The protest is brought against Steve Vairma, Dave Ring, Sylvia Salazar, Roger Quimby, Ron Cash, Gary Stuggart and Roman Garcia, all members of the Local Union 435 Executive Board. In essence, the protest alleges that the Executive Board has stopped giving adequate representation to the workers at United Parcel Service ("UPS") because the Executive Board supports the candidacy of James P. Hoffa for general president and the members who work at UPS are known to support incumbent General President Ron Carey. The protester requests that the Executive Board of Local Union 435 be removed until after the election.

Respondents deny that they have failed to give adequate representation to the members who work at UPS, and further deny that any of their representational duties have been affected by which candidate they support for general president. Indeed, Mr. Ring asserts that he went to the IBT Convention as a declared delegate on behalf of Mr. Carey.

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The protest was investigated by Associate Regional Coordinator Zeik Saidman.

On or about August 13, 1996, the protester submitted to the IBT's Ethical Practices Committee a three-page letter, with certain supporting statements by members, alleging a failure of Local Union 435 to represent the members at UPS. The letter specifies nine separate incidents or types of conduct which allegedly demonstrate inadequate or improper representation of members at UPS. The complaint includes such allegations as failure to investigate a seniority grievance, failure to respond to grievances in a speedy manner, being too cozy with management, failing to conduct a local hearing, being afraid to take on management and refusing to act on allegations of racial discrimination.

In response, Mr. Ring and Local Union 435 Business Agent Ron Smith provided detailed responses to all of the allegations, including a description of all the actions taken by business agents with respect to each particular grievance and an explanation of the action taken. Their response includes a number of relevant documents to support their assertions that at all times they took correct and appropriate remedial action in response to grievances or complaints by members. In addition, Mr. Ring points out that his ability to handle grievances as quickly as he would have liked during the relevant time period was hampered by Mr. Smith's medical leave of absence, leaving only one full-time business agent to handle the UPS facility.

The *Rules* at Article VIII, Section 11(f) prohibit retaliation and the threat of retaliation by any person against a member for exercising any right guaranteed therein. 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 charged party would have taken the same action even in the absence of the protester's protected conduct. See Wsol, P-095-IBT-CHI (September 20, 1995), aff'd, 95 - Elec. App. - 17 (KC) (October 10, 1995).

Here, it unnecessary for the Election Officer to determine the quality of representation given by Local Union 435 to its UPS members because the protester has failed to provide any evidence that any of the activities of the business agents have been motivated in any way by their support or opposition to candidates for International office. Indeed, the protester has not even presented sufficient evidence to demonstrate that the respondents herein are actually supporters of Mr. Hoffa. Mr. Ring, for example, asserts that he supports Mr. Carey and has no political motivation to deny adequate representation to the UPS members.

The Election Officer's authority does not extend to passing judgment on the adequacy of the union's representation of its members, except upon proof that the union has retaliated or discriminated against certain members based on who they support or oppose for International office. There is no evidence of any kind upon which a claim of retaliation or discrimination can be made in this case. Accordingly, the Election Officer sees no need to review the merits of the various grievances and arbitrations in question.

The protester also asserts that certain managers at UPS have made veiled threats about "taking him out"--that is, firing him--if he continued his campaign against the leaders of Local Union 435. However, Mr. Newhouse refused to provide the names of any managers because he was afraid they might find out what he said. While such allegations of retaliation are taken seriously by the Election Officer, the absence of any evidence makes it impossible to find any violation. Assuming such an allegation, if evidence is provided, involves the International officer election rather than local union politics, the burden is on the protester to present evidence to the Election Officer of a violation of the *Rules*. In Re: Chentnik, 95 - Elec. App. - 52 (KC) (January 10, 1996). Here, the refusal to provide even the names of witnesses means not only that the burden of proof cannot be met, but that the Election Officer is precluded from conducting her own investigation as well.

For the above 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

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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  
Zeke Saidman, Associate Regional Coordinator