

September 23, 1996

VIA UPS OVERNIGHT

Richard Carlucci
1925 S. Lombard
Cicero, IL 60804

Jim Kulas, Counsel
Chicago Tribune Distribution Center
777 W. Chicago Avenue
Chicago, IL 60610

Tony Judge, Secretary-Treasurer
Teamsters Local Union 706
300 S. Ashland Avenue, Room 302
Chicago, IL 60607

Re: Election Office Case No. P-916-LU705-CHI

Gentlemen:

Richard V. Carlucci, a member of Local Union 705, filed a pre-election protest pursuant to *Article XIV, Section 2(b) of the Rules for the 1995-1996 International Union Delegate and Officer Election ("Rules")* alleging that the *Chicago Tribune* ("*Tribune*") violated Article VIII, Section 11(e) of the *Rules* when it denied him access to an employee parking lot on August 29, 1996 to campaign for a candidate in the International officer election. Mr. Carlucci also alleges that a person driving a *Tribune* truck-tractor violated the *Rules* when he attempted to run over Mr. Carlucci to prevent him from campaigning.¹

Mr. Carlucci further questions whether Local Union 706 Secretary-Treasurer Tony Judge was involved in these incidents, based on hearing someone tell a *Tribune* security guard to call "Tony."

¹Mr. Carlucci has indicated that he wishes to withdraw this portion of his protest.

The *Tribune* declined to file a written response to this protest, stating that it is "not ripe for review," alleging that Mr. Carlucci and another IBT member, Cathleen Thomas, did not present identification. The *Tribune* has, however, discussed this matter extensively with Regional Coordinator Julie E. Hamos and Election Office Protest Chief Benetta Mansfield and responded verbally as follows. The *Tribune* admits that it denied the protester access to the Tribune parking lot. It also contends that the protester does not have the right to campaign on its property because the **Rules** do not apply to the *Tribune*, that the protester's rights under the **Rules** are outweighed by the *Tribune's* property rights and its safety and business efficiency consideration, that the parking lot is not an employee parking lot, that the protester has other means by which he can communicate with employees, and that the protester was offered the opportunity to campaign on the sidewalk outside the parking lot.

This protest was investigated by Regional Coordinator Julie E. Hamos.

Mr. Carlucci alleges that on August 29, 1996, he and Local Union 347 member Cathleen Thomas entered the parking lot of the *Chicago Tribune* Distribution Center (the "parking lot") to distribute Carey campaign literature from a site near the guard shack. The guard shack is located just inside the parking lot gate.

Mr. Carlucci alleges that upon entering the parking lot he was approached by a *Tribune* security guard who told him to leave. Mr. Carlucci alleges that he informed the guard of his right to campaign under the **Rules** and that a second guard arrived, told Mr. Carlucci to leave, and eventually called the police. Mr. Carlucci states that he and Ms. Thomas exited the lot shortly before the arrival of the police to avoid arrest.

Kevin King, *Tribune* distribution manager in charge of fleet operations, states that the Tribune has a "no solicitation rule" and does not allow anyone on its parking lot. Mr. King states that the "no solicitation rule" applies to everyone and is strictly enforced. Mr. King also states that the *Tribune* has never, in any election, allowed anyone on their property. Mr. King states that Tony Herren, the night shift supervisor, was the "Tony" involved in this incident, not Local Union 706 officer Tony Judge.

Tribune counsel Jim Kulas contends that the lot is not an "employer parking lot," but a "distribution center." Mr. Kulas cites public and employee safety considerations in defense of the *Tribune's* "no solicitation" policy and its denial of access to its parking lot. Mr. Kulas contends that there are other means by which Mr. Carlucci can communicate with *Tribune* employees and that Mr. Carlucci was offered the opportunity to campaign on the sidewalk in front of the *Tribune* parking lot. Mr. Kulas expresses his doubt that the **Rules** apply to the *Tribune*, a private company that was not a

party to the Consent Decree or the case giving rise to it, United States v. International Bhd. of Teamsters, 88 Civ. 4486 (DNE) (S.D.N.Y.), pursuant to which the **Rules** were promulgated. He further expresses his belief that the *Tribune's* property rights supersede any right to campaign that Mr. Carlucci may be afforded by the **Rules**.

Mr. King confirms that the following procedures take place at the parking lot in question, which is an open lot secured by barbed wire and security guards. Employees enter the lot and stop at a guard shack to show *Tribune* employee identification. After presenting the employee ID, employees exit their vehicles, collect a "load sheet" that states the size of the load they will transport that day, and drive to where *Tribune* delivery trucks are parked. The employees then exchange personal vehicles for delivery trucks, park their cars in the truck space, and drive to another *Tribune* lot to pick up their load.

Visual inspection of the lot by the Election Officer's investigator confirmed that the 123 IBT members who drive *Tribune* delivery trucks use the parking lot in question as an employee parking lot while they are working. The Election Officer recognizes that legitimate concerns about public and employee safety and traffic congestion exist at the lot because the Distribution Center operates 24 hours a day, with employee vehicles and *Tribune* delivery trucks entering and exiting the lot at all hours. The Election Officer also finds, however, that the position chosen by Mr. Carlucci for his campaign activity--just inside the lot to the east of the guard shack--did not materially interfere with the *Tribune's* normal business operations or place Mr. Carlucci near the exchanges of personal vehicles for trucks.

Article VIII, Section 11(e)(iii) of the **Rules** provides:

[A] candidate for International office and any Union member within the regional area(s) in which said candidate is seeking office may distribute literature and/or otherwise solicit support in connection with such candidacy in any parking lot used by Union members to park their vehicles in connection with their employment in said regional area(s).

The Election Officer finds that the *Tribune* violated the **Rules** when it prevented Mr. Carlucci from distributing International officer election campaign literature in its parking lot.

Article VIII, 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. Employers may also verify the identify of members wishing to campaign: "An employer may require reasonable identification to assure that a person seeking access to an employee parking lot pursuant to this rule is a candidate or other Union member entitled to such access. See Terrazas, P-825-LU63-CLA (July 11, 1996), aff'd, 96 - Elec. App. - 217 (KC) (July 22, 1996); Eby, P-575-LU560-MOI (March 11, 1996), aff'd, 96 - Elec. App. - 73 (KC) (February 13, 1996).

In the instant case, Mr. Carlucci's activities were well within the scope of the limitations imposed by the *Rules*. He stood in a small area immediately inside the employer's gate and distributed International officer election campaign literature to employees before they began their shift, at a time when their vehicles were already stopped. Mr. Carlucci's activities did not materially interfere with the *Tribune's* normal business activities and did not place him near those parts of the lot where exchange of private vehicles for trucks may raise legitimate safety concerns.

The *Tribune* claims that this matter is not ripe for review due to the failure of Mr. Carlucci and Ms. Thomas to submit proper identification. Investigation disclosed that Ms. Thomas did not have identification at the time she wished to campaign. Mr. Carlucci, however, furnished the *Tribune's* security guard with a local union dues slip. Such a slip confirmed that Mr. Carlucci was an IBT member entitled to the rights and protections of the *Rules*. Therefore, the Election Officer finds that Mr. Carlucci was entitled to exercise his right to campaign on the *Tribune's* employee parking lot.

The *Tribune* seeks to avoid coverage under the access rule, asserting that the parking lot in question is not an "employee parking lot." As noted above, the investigation established that the parking lot, used by 123 IBT members to park their personal vehicles, is an employee parking lot, under the *Rules*.

The *Tribune* also asserts that the *Rules* do not apply to it because it was not a party to the Consent Decree, under which the *Rules* were promulgated. This argument was firmly rejected by United States District Judge David N. Edelstein when the Court modified and affirmed the *Rules*:

[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.

United States v. International Bhd. of Teamsters, aff'd as modified on other grounds, ___F.3d___, 1996 WL 316635 (2d Cir. 1996).

The *Tribune* further argues that the protester's rights under the **Rules** are outweighed by the *Tribune's* property rights and business efficiency considerations. Access to campaign on employer parking lots is presumptively available under Article VIII, Section 11(e) of the **Rules**, notwithstanding any employer rule or policy to the contrary, based upon the Election Officer's finding that an absence of such rights would subvert the Consent Order's objectives of ensuring free, honest, fair and informed elections and opening the union and its membership to democratic processes.

Article VIII, Section 11(e) of the **Rules** also sets forth a means of rebutting this presumption: Such presumption may be rebutted, however, by demonstrating to the Election Officer that access to Union members in an employer parking lot is neither necessary to nor appropriate to meaningful exercise of democratic rights in the course of the 1995-1996 election. An employer seeking to deny access to Union members in an employee parking lot may seek relief from the Election Officer at any time.

The *Tribune* has not sought such relief and the Election Officer does not find that it has demonstrated a basis for such relief in its oral response to this protest.

Under the **Rules**, Mr. Carlucci must be provided with a meaningful opportunity to campaign. Campaign activities conducted outside the gate would prevent face-to-face contact and reduce campaign opportunities to brief encounters through the windows of vehicles. Such activity would also create a greater potential for disrupting traffic and the legitimate business of the employer. See In Re: Eby, 96 - Elec. App. - 131 (KC) (March 19, 1996). The *Tribune* has not presented sufficient evidence to rebut the presumptive right of access encompassed by the **Rules**.

The Election Officer also finds that Mr. Judge was not involved in this matter.

Accordingly, the protest is GRANTED as to the *Chicago Tribune* and DENIED as to Mr. Judge.

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.

The Election Officer orders the *Chicago Tribune* to permit campaigning in the parking lot where IBT members park their personal vehicles, in conformity with Article VIII, Section 11(e) of the ***Rules***, subject only to the limitations set forth in that section. Within two (2) days of the date of this decision, the *Chicago Tribune* shall submit an affidavit to the Election Officer in which it acknowledges its compliance with this decision.

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, 1996).

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
Julie E. Hamos, Regional Coordinator