

September 26, 1996

**VIA UPS OVERNIGHT**

George Saavedra  
845 Thetford Place  
Fairfield, CA 94533

Nathaniel Charny  
Cohen, Weiss & Simon  
330 W. 42nd Street  
New York, NY 10036

Ralph Scales  
Vacu-Dry  
2064 Gravenstein Highway 116  
Sabastopol, CA 95473

**Re: Election Office Case No. P-923-LU439-CSF**

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 George Saavedra, a member of Local Union 439. Mr. Saavedra alleges that Ralph A. Scales, vice president of operations for Vacu-dry company, violated the *Rules* when he prohibited Mr. Saavedra and Local Union 439 Member Steve MacDonald from campaigning in a Vacu-dry parking lot.

In response, Mr. Scales admits that Messrs. Saavedra and MacDonald were denied access to Vacu-dry's employee parking lot, but states that Vacu-dry has consistently enforced this no-access policy in regards to the local union elections. He states that adequate access through the use of another Vacu-dry parking lot is available to IBT members.

This protest was investigated by Regional Coordinator Matthew D. Ross.

The facts are undisputed. Vacu-dry, a food processor located in Sabasatopol, Calif., employs Local Union 624 members. The company processes fresh apples, which are trucked into its production yard from the field and dried at the plant. On August 29, 1996, Mr. Saavedra and Mr. McDonald attempted to pass out campaign literature at Vacu-dry, where production employees park ("Parking Lot A"). After they had begun distributing campaign literature, Mr. Scales confronted the two men, who identified themselves and their purpose for being on the employer's premises. Mr. Scales told them that while they could not campaign in Parking

Lot A, they could do so in an alternative parking lot located just inside the main gate to Vacu-dry's property ("Parking Lot B"). Parking Lot B is located between one-quarter and one-third of a mile from Parking Lot A. Before forcing them to leave Parking Lot A, Mr. Scales permitted Messrs. Saavedra and MacDonald to enter the employer's facility and leave campaign literature in the lunch room and shipping department. Believing they could gain adequate access to IBT members only by campaigning in Parking Lot A, Mr. Saavedra filed this protest.

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.

In approving the *Rules*, the 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 (1996 Election Rules Order), 896 F. Supp. 1349 (S.D.N.Y. 1995), aff'd as modified, 86 F.3d 271 (2d. Cir. 1996).

In an effort to resolve this protest, Regional Coordinator Ross contacted Mr. Scales to explain the *Rules* provision requiring employers to provide IBT members access to their employee parking lots for the distribution of literature or other campaign activities. In a letter of response, Mr. Scales argues that allowing IBT members access to Parking Lot B, as opposed to Parking Lot A, does not undermine the quality of campaign opportunities available under the *Rules* and would interfere less with Vacu-dry's business operations. Mr. Scales states that Parking Lot B is safer, and provides "an excellent means to reach the maximum number of employees . . . ."

Mr. MacDonald submitted photographs, which the Election Officer reviewed, in support of Mr. Saavedra's protest. Mr. MacDonald states that Parking Lot B is inadequate for campaign purposes because IBT members park their cars in Lot A and only drive by Lot B.

Thus, he states that Lot A provides an opportunity for face-to-face contact with members that Lot B does not provide. Mr. Sceales concedes that members park their cars in Lot A and not Lot B.

Based on these facts, the Election Officer finds that affording a right-of-access to Lot B does not comply with Article VIII, Section 11(e) of the **Rules**. Face-to-face access with many Vacu-dry employees in the lot where the employees park their vehicles would be denied to IBT candidates and their supporters if Vacu-dry were permitted to substitute access to non-employee parking lots for employee parking lots.

The Election Officer has considered Vacu-dry's contention that, under these circumstances, interference with its daily operations and safety concerns establish a compelling need to restrict campaigning in the employee parking lot. The mere presence of other vehicles passing through the employee parking lot to deliver and retrieve produce, without more, is insufficient to establish that such restrictions are necessary.

In consideration of the foregoing, Mr. Saavedra's protest is GRANTED.

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 Vacu-dry to permit campaigning in the parking lot where IBT members park their personal vehicles ("Parking Lot A"), in conformity with Article VIII, Section 11(e) of the **Rules** and subject only to the limitations set forth in that section, supra.

Within two (2) working days of the date of this decision, Vacu-dry 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:

George Saavedra  
September 26, 1996  
Page 4

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  
Matthew D. Ross, Regional Coordinator