

July 8, 1998

**VIA UPS OVERNIGHT**

Michael F. Clark  
3624 Belgrade Street  
Philadelphia, PA 19134

Dan McGinley, Assistant Trustee  
Teamsters Local Union 107  
107 Spring Garden Street  
Philadelphia, PA 19123

Kevin Lonergan  
Teamsters Local Union 107  
107 Spring Garden Street  
Philadelphia, PA 19123

Bradley T. Raymond, Esq.  
Finkel, Whitefield, Selik,  
Raymond, Ferrara & Feldman  
32300 Northwestern Highway  
Suite 200  
Farmington Hills, MI 48334

Gerard P. McNamara, Trustee  
Teamsters Local Union 107  
107 Spring Garden Street  
Philadelphia, PA 19123

John P. Morris, President  
Teamsters Joint Council 53  
3460 North Delaware Avenue  
Suite 310  
Philadelphia, PA 19134

Kathy McGovern  
Penn-Jersey Paper Company  
2801 Red Lion Road  
Philadelphia, PA 19154

**Re: Election Officer Case No. PR-113-LU107-NYC**

Gentlepersons:

Michael F. Clark, a member of Local Union 107, filed a pre-election protest pursuant to Article XIV, Section 2(b) of the ***Rules for the 1995-1996 IBT International Union Delegate and Officer Election ("Rules")*** against the following individuals: Gerald P. McNamara, trustee of Local Union 107; Dan McGinley, administrative assistant to Mr. McNamara; Kevin Lonergan, a business agent of 107; and John P. Morris, president of Joint Council 53 and a candidate for International vice-president in the rerun election.

The protester alleges that Mr. McGinley and Mr. Lonergan improperly removed campaign material from an employee bulletin board in direct violation of the ***Rules***. Messrs. McGinley and Lonergan admit that they took down the campaign material, but assert that they only did so temporarily in order to show the material to the employer in an attempt to convince him to let other candidates post similar campaign material. Mr. McNamara admits ordering Messrs. McGinley and Lonergan to remove the campaign material in order to determine what management's position was regarding the posting of such material.

The protest was investigated by New York City Protest Coordinator Barbara C. Deinhardt.

According to Mr. McNamara, he received a phone call from a local union member who informed him that campaign material in support of James P. Hoffa's candidacy for International president was posted on an employees' bulletin board at the Penn-Jersey Paper facility in Philadelphia, Pennsylvania. On May 27, 1998, Mr. McNamara ordered Messrs. Lonergan and McGinley to go to the employee bulletin board, to take down the campaign material, to show it to management at the facility, to ask management for their policy on political postings, and to insist that if the material was to remain posted then other candidates should also be allowed to post campaign material.

That same day, Messrs. Lonergan and McGinley arrived at the facility and immediately proceeded through the loading dock to the location of the employee bulletin board. At that time, there were five (5) pieces of paper posted on the 2' x 3' bulletin board, two (2) of which were pro-Hoffa flyers and two of which were anti-Morris flyers. According to Shop Steward Philip Martellaci, the campaign material had been up for approximately one month, campaign material had been posted on the bulletin board during prior elections, and there had never been any problems before with such material being taken down.

Messrs. Lonergan and McGinley took all of the campaign material down and were immediately surrounded by a group of loud and angry Teamster employees who demanded to know why they were there and why they were removing the material. According to witnesses, Mr. McGinley told the employees that he had been sent by Mr. Morris to take down the material. The confrontation continued to escalate until the Penn-Jersey Paper manager on duty, George Thomas, arrived and requested that Messrs. Lonergan and McGinley, along with Mr. Martellaci, step into his office to resolve the matter.

According to both Mr. Thomas and Mr. Martellaci, Mr. Thomas told Messrs. Lonergan and McGinley that they should leave their political differences outside and that he allowed the employees to post any material that they wanted to on the employee bulletin board. Messrs. Lonergan and McGinley contend that Mr. Thomas told them that no political material was allowed to be posted on the bulletin board. The Election Officer credits Messrs. Thomas and Martellaci's version of events over that of Messrs. Lonergan and McGinley due to the fact that immediately after talking with Mr. Thomas at the facility, Mr. McGinley offered to re-post the campaign materials that he had taken down. Although the pro-Hoffa flyers were re-posted, when Mr. McGinley left the facility, he kept the anti-Morris flyers.

The **Rules** at Article VIII, Section 11(d) provides in pertinent part that "[N]o restrictions shall be placed upon candidates' or members' preexisting rights to use employer or Union bulletin boards for campaign publicity." See Casteel, PR-085-LU705-NCE (May 21, 1998). The existence of a preexisting right to use employer bulletin boards for campaign purposes may be established through a review of the manner in which the bulletin board has been used in the past. Kirkpatrick, P-1243-LU630-CLA (November 27, 1996); Blake, P-953-LU848-CLA (October 30, 1991); In Re: Hall, 90 - Elec. App. - 1 (October 4, 1990); Brinkman, P-151-LU305-PNW (September 18, 1995), aff'd, 95 - Elec. App. - 21 (KC) (October 10, 1995).

The Election Officer finds that the Penn-Jersey Paper employee bulletin board at issue is regularly used by members supporting candidates for International office to post campaign-related material. Consequently, there is a pre-existing right for members to use this bulletin board to post campaign material. The Election Officer determines that by directing the removal of campaign material and by removing the campaign material, Messrs. McNamara, Lonergan, and McGinley violated the **Rules**. Mr. Morris did not initiate or participate in the protested activities, therefore, that portion of the protest directed against him is denied.

Accordingly, the protest is GRANTED in part; and DENIED in part.

When the Election Officer determines that the **Rules** have been violated, he "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 following:

1. Messrs. McNamara, Lonergan, and McGinley, and all other officers and representatives of Local Union 107, shall immediately cease and desist from removing any campaign literature from the employee bulletin board(s) located at the Penn-Jersey Paper Company, 2801 Red Lion Road, Philadelphia, Pennsylvania.

2. Within two (2) days of this decision, Mr. McNamara shall post the attached "Notice to Teamster Members Employed By Penn-Jersey Paper" on the employee bulletin board(s) referred to in paragraph one (1.) above for 30 days.

3. Within one (1) day after posting the Notice, Local Union 107 shall file an affidavit with the Election Officer demonstrating compliance with this order.

An order of the Election Officer, unless otherwise stayed, takes immediate effect against a party found to be in violation of the **Rules**. In 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 (1) 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

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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, 444 North Capitol Street, NW, Suite 445, Washington, DC 20001, Facsimile (202) 624-3525. A copy of the protest must accompany the request for a hearing.

Sincerely,

Michael G. Cherkasky  
Election Officer

MGC:chh  
Enclosure

cc: Kenneth Conboy, Election Appeals Master  
Barbara C. Deinhardt, New York City Protest Coordinator

## **NOTICE TO TEAMSTER MEMBERS EMPLOYED BY PENN-JERSEY PAPER**

You have the right to participate in campaign activities on behalf of candidates for International Officer of the IBT in the Rerun Election.

You have the right to post campaign material on general purpose bulletin boards not reserved for official company or union announcements.

No one, including union representatives and members, can remove the campaign material or otherwise prohibit you from engaging in the above-described campaign activity.

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Date

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Michael G. Cherkasky  
Election Officer

***This is an official notice and must remain posted for 30 consecutive days from the day of posting, and must not be altered, defaced or covered by any other material.***