

September 14, 1998

VIA FIRST-CLASS MAIL

James Everson
3523 North Cramer Street
Shorewood, WI 53211

Stephen G. Katz, Esq.
Krukowski & Costello
P.O. Box 28999
Milwaukee, WI XXX-XX-XXXX

Re: Election Office Case No. PR-182-LU200-NCE

Gentlepersons:

James Everson, a member of Local Union 200, 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 Roadway Express ("Roadway") in Milwaukee, Wisconsin. The protester alleges that Roadway has prohibited him from wearing a t-shirt supporting Tom Leedham, a candidate for general president, contrary to Roadway's established policy that permitted employees to wear campaign paraphernalia. Mr. Everson contends that numerous employees have been permitted to wear campaign paraphernalia at work. Mr. Everson works on the loading dock at Roadway's Milwaukee Terminal.

Roadway states that the action taken against the protester enforces a long-standing written company policy prohibiting employees who have contact with the public from wearing campaign paraphernalia, and that workers in the dock area are "frequently" visited by customers and prospective customers.

The protest was investigated by Regional Coordinator Judith E. Kuhn.

Mr. Everson is a combination dock worker and driver at Roadway. On July 22, 1998, he was assigned to work on the dock, and was wearing a t-shirt supporting Mr. Leedham. The front of the t-shirt had the name "Hoffa" with a circle around it and a diagonal line through it, and read "not now, not ever." The back of the t-shirt had Mr. Leedham's name on it. Mr.

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Everson was called up to the terminal manager's office, who advised the protester that there was a company policy against wearing campaign attire, and some people were offended by the t-shirt. The terminal manager asked Mr. Everson to change his shirt and he did. On July 25, Mr. Everson asked the terminal manager if he could wear the Leedham t-shirt and the terminal manager advised him that if he did, he risked discipline.

Mr. Everson states that, within the past year, Roadway has posted a policy prohibiting employees from wearing political attire, but that during the 1996 election, he wore a button supporting Ron Carey without incident.

Roadway has issued policy sheets dated January 1, 1996, and January 1, 1998, which state, in pertinent part:

Employees are expected to wear appropriate attire consistent with accepted business norms.

Employees who are not in personal contact with the Company's customers or the public may wear union election-related buttons, hats, etc. that are not vulgar or obscene, do not incite imminent violence, do not present a serious safety concern, and/or not inflammatory, derogatory or defamatory to Roadway (or its officials).

Although several of the employees interviewed by the investigator denied knowledge of the policy, the Election Officer noted this policy and its longstanding nature in Alexander, P-1123-LU350-SEC (November 4, 1996). In that decision, the Election Officer found that Roadway did not allow employees to wear campaign buttons during the time that they are in contact with customers and the public in line with its longstanding policy. Therefore, the Election Officer concluded that application of this rule to its drivers at the Miami terminal was consistent with the **Rules**.

The investigator interviewed a number of witnesses concerning this protest. Most witnesses recall one or more incidents where Roadway tolerated the wearing of campaign paraphernalia, even for drivers. For example, a city driver stated that he wears a "Leedham patch" on his hat and has been observed doing so by the foreman. He also stated that when working on the dock, he has frequently worn a Carey t-shirt. Another driver states that in 1996 he wore a "Carey/Busalacchi" button to work all the time, even when he was driving. Roadway offered two witnesses both of whom are union stewards. One stated that he had never seen political paraphernalia worn on the dock. The other witness stated that he had not seen campaign t-shirts but had seen people wearing buttons and stickers.

Article VIII, Section 11(d) of the **Rules** states that "no restrictions shall be placed upon candidates' or members' preexisting rights to solicit support, distribute leaflets or literature, conduct campaign rallies, hold fundraising events or engage in similar activities on employer or Union premises." The *Advisory on Wearing of Campaign Buttons and Other Emblems*

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(“*Advisory*”) issued by the Election Officer on September 20, 1995, states that “among the rights so protected by the **Rules** is the right of IBT members to wear campaign emblems on buttons, t-shirts or hats while working (citations omitted). The *Advisory* states further that:

[A] member’s right to wear campaign emblems, including buttons, t-shirts and hats, while on work time may be circumscribed by the member’s employer or the public at large. The employer may prevent the wearing of campaign emblems only where the prohibition is necessary to maintain production and discipline, safety or preventing alienation of customers. The basis for these limited exceptions is the right of the employer to prevent unrelated third parties from inappropriately assuming that the employer supports the political or campaign position advocated by the employee or the employee’s emblem.

(Citation omitted.)

In this case, Roadway states that campaign paraphernalia is not permitted on its dock either in the 1996 or in the current election, because the dock area is “frequently” visited by customers and prospective customers.

The witnesses uniformly state that the contact between dock workers and the public is fairly minimal. Freight is generally picked up at and delivered to customer docks. The Roadway terminal is not designed for extensive customer contact; it is away from the road and surrounded by barbed wire, with a sign posted stating “No Unauthorized Entry.” The protester’s witnesses stated that a public customer may come to the dock at most “once a day.” The witnesses supplied by Roadway differed: one stated that there could be two to three contacts with the public on the dock each day; and the other worker corroborated the protester’s witnesses, stating that this occurred once or twice a day.

While Roadway’s policy does not permit employees who have contact with the public to wear union-related paraphernalia, it appears that Roadway has tolerated such conduct among the dock workers and that the dock worker contact with the public is minimal. Although Roadway states that it has not condoned such conduct, this appears to be inaccurate. Moreover, the only other workers (excluding front office workers) at the facility aside from drivers are dock workers and yard workers. The record indicates that both sets of workers have the same minimal contact with the public, and have been permitted to wear campaign paraphernalia. To reach the interpretation posited by Roadway in this protest, would effectively place a ban on the wearing of campaign paraphernalia for all Teamster-represented employees.

Accordingly, the Election Officer finds that there is a pre-existing right for dock workers to wear campaign paraphernalia and that Roadway violated the **Rules** by threatening the protester

with discipline for wearing a t-shirt in support of Mr. Leedham.

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The protest is therefore GRANTED.

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 also orders Roadway to immediately cease and desist from interfering with the pre-existing right of employees who work on its dock to wear campaign paraphernalia.

By September 21, 1998, Roadway will post the attached “Notice to Employees” on any employee bulletin boards at its Milwaukee, Wisconsin, facility.

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 (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
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.

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Sincerely,

Michael G. Cherkasky
Election Officer

MGC:mk
Enclosure

cc: Kenneth Conboy, Election Appeals Master
Judith E. Kuhn, Election Officer Representative

NOTICE TO ROADWAY EMPLOYEES

The IBT Election Officer has found that Roadway violated the *Election Rules* when it refused to permit a dock worker to wear campaign paraphernalia supporting a candidate in the IBT International Officer Rerun Election. The Election Officer found that Roadway has permitted such conduct in the past and therefore there is a pre-existing right for dock workers to wear campaign paraphernalia. The Election Officer has previously ruled that Roadway 's longstanding policy that drivers who have extensive contact with the public may not wear campaign paraphernalia does not violate the *Election Rules*.

The Election Officer has ordered Roadway to immediately cease and desist from interfering with the pre-existing right of employees who work on its dock to wear campaign paraphernalia.

Michael G. Cherkasky
Election Officer

This is an official notice which must remain posted for 30 consecutive days and must not be defaced or altered in any manner or be covered with any other material.