

September 28, 1998

**VIA FIRST CLASS MAIL**

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113 University Place  
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**Re: Election Office Case No. PR-191-LU856-PNW**

Gentlepersons:

Kim Shanahan, a member of Local Union 856 and a candidate for International office on the Tom Leedham "Rank and File Power" Slate ("Leedham Slate"), 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 Browning Ferris Industries ("BFI"). Ms. Shanahan alleges that on July 29, 1998, she and another IBT member were denied access to employee parking lot at BFI's Pacheco, California facility and treated rudely, when they arrived there to campaign.

BFI responds that the incident occurred the day before a strike began but that BFI is willing to permit access under the *Rules*.

This protest was investigated by Adjunct Regional Coordinator Paige Keys.

There is no dispute as to the facts. On July 29, the protester and another IBT member arrived at BFI to campaign in the employee parking lot. They went to the office and asked to be admitted to the employee parking lot and were denied access.

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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 unlimited. 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. An employer may require reasonable identification.

The Adjunct Regional Coordinator discussed the denial of access with Counsel to BFI. BFI has agreed to employee parking lot access at its Pacheco facility during hours the parking lot is normally open to employees, 4:00 a.m. to 5:30 a.m. and 2:00 p.m. to 5:30 p.m. Those wishing to campaign should telephone Lynne Ashcraft at 925-671-5802 prior to their arrival to arrange for access and security clearance to the employee parking lot.

Accordingly, the Election Officer is satisfied that the protest has been RESOLVED.

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,

Michael G. Cherkasky  
Election Officer

cc: Kenneth Conboy, Election Appeals Master  
Paige Keys, Adjunct Regional Coordinator