

November 18, 1998

VIA FACSIMILE AND FIRST CLASS MAIL

Robert L. Doss
12535 Aspenview Street
Victorville, CA 92392

Mike Pharris, Business Rep.
Teamsters Local Union 952
140 S. Marks Way
Orange, CA 92868

James P. Hoffa
2593 Hounds Chase
Troy, MI 48098

Andrew Scoggin
Director of Labor Relations
Albertsons
Post Office Box 20
Boise, Idaho 83706

Hoffa Slate
c/o Patrick J. Szymanski, Esq.
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Farmington Hills, MI 48334

Ed J. Mireles, Sec.-Treas.
Teamsters Local Union 952
140 S. Marks Way
Orange, CA 92868

Randy Cammack
P.O. Box 679
Bloomington, CA 92316

**Re: Election Office Case Nos. PR-344-LU952-EOH
PR-384-LU952-EOH**

Gentlemen:

Related pre-election protests were filed by Mike McDonald and Mike Pharris, members of Local Union 952, pursuant to Article XIV, Section 2(b) of the ***Rules for the 1995-1996 IBT International Union Delegate and Officer Election*** (“***Rules***”). In PR-344, Mr. McDonald alleges that Mr. Pharris violated the ***Rules*** by removing campaign literature supporting Randy

Cammack, a candidate for at-large vice-president on the Hoffa Unity Slate, posted on the union's bulletin board in the Albertsons warehouse facility in Brea, California ("Albertsons"). In PR-384, Mr. Pharris maintains that there is no pre-existing right to post campaign material on the union's bulletin boards at the Albertsons and that Mr. McDonald violated the **Rules** by posting campaign material. Mr. Pharris also alleges that Albertsons has violated the **Rules** by allowing Mr. McDonald to post the campaign material on the union's bulletin board and that such assistance constitutes a prohibited employer endorsement of the Hoffa/Cammack campaign. Mr. Pharris additionally asserts that the alleged posting of the campaign material with Albertsons shipping material creates the impression that Albertsons is attacking Messrs. Mireles and Leedham.

The protest was investigated by Election Office Staff Attorney Kathryn A. Naylor.

Mr. McDonald asserts that for approximately the last nine years, including the 1991 and 1996 International officer elections, there has been campaign material supporting Mr. Mireles' campaigns for local union office and International office posted on the union's bulletin board in the warehouse. Mr. McDonald maintains that as a shop steward during the 1996 International election, he personally posted campaign literature supporting Mr. Mireles and the Carey campaign on this board.

Mr. Pharris admits that he removed all campaign material, including the Hoffa/Cammack literature, from the warehouse bulletin board. Mr. Pharris maintains that the collective bargaining agreement with Albertsons provides that the bulletin boards must be used exclusively for official union business.¹ Mr. Pharris states that he has been the business agent at Albertsons since January, 1998, and that there is no history or past practice of posting campaign material on any of the union's three official bulletin boards. Mr. Pharris stated that Jim Newman, the former business agent for the warehouse at Albertsons, advised him that there was also no practice of posting campaign material on the warehouse board during his tenure.

¹Article XIV of the collective bargaining agreement with Albertsons provides, in pertinent part: "The Employer shall provide a bulletin board which shall be used exclusively for authorized Union Notices, but same shall not be posted until they have been first called to the attention of the Employer. All such Union Notices shall be authorized and signed by the Secretary/Treasurer of the Local Union or by his designee who shall be a full-time representative of the Local Union involved."

The investigator spoke with Mr. Newman who confirmed that he was the business agent for the warehouse members from the end of July, 1996 until January, 1998, when Mr. Pharris assumed this responsibility. Although Mr. Newman stated that he did not recall any campaign material posted on the warehouse bulletin board during the 1996 International officer election, he mentioned that some campaign material probably had been posted on the warehouse bulletin board since both Messrs. Carey and Hoffa had made campaign appearances in the area in 1996. Mr. Newman noted that during the period July through December 1996, he only visited the facility for business functions such as grievance hearings. Mr. Newman mentioned that Mr. McDonald was more involved and knowledgeable regarding what occurred at the facility. Mr. Newman noted that Mr. McDonald was a former business agent for Local Union 952 with responsibility for the Albertsons between February and June or July of 1996, before he returned to work at Albertsons. Mr. Newman stated that he could neither confirm nor deny Mr. McDonald's assertions in this protest that campaign material for Mr. Mireles and the Carey campaign was frequently posted on the warehouse bulletin board during the 1996 International Officer Election. Mr. Newman stated that had he observed any campaign material on the warehouse bulletin board, he would have removed it in line with the language in the contract that allows only official notices for union meetings to be posted on the bulletin boards. Mr. Newman stated that he removed Hoffa campaign literature in July or August, 1998 pertaining to the International Officer Rerun Election.

Andrew Scoggin, the Director of Labor Relations for Albertsons, states that despite the language in the collective bargaining agreement, the company does not police or otherwise involve itself in what is posted on the union's bulletins boards. Mr. Scoggin noted that if there was a posting that was clearly out of bounds, the company would ask the local union to remove it. However, Mr. Scoggin stated that he was not aware of any requests in the past by the company to remove campaign material that was posted on the union's bulletin boards.

The investigator spoke with two witnesses supplied by the Mr. McDonald. Dan Hernandez, a shop steward at Albertsons for 21 years, corroborated Mr. McDonald's claims that campaign literature supporting Mr. Mireles was frequently posted on the union's bulletin boards for the 1996 International officer election. Mr. Hernandez stated that in 1996, Mr. Pharris also removed any campaign literature that was anti-Mireles and the Carey campaign, but that Mr. Pharris ceased removing such literature after a discussion with Mr. Hernandez about the matter. Dave McClintock, an employee at Albertsons for 21 years, recalls at least one occasion where campaign material for a Carey fundraiser was posted on the union's warehouse bulletin board.

The investigator also spoke with Jim Boardman, a former business agent of Local Union 952 with responsibility for the Albertsons warehouse facility during the 1991 International election. Mr. Boardman states that before he retired from the local union on December 31, 1995, he was a staunch supporter and executive coordinator for Mr. Mireles. Mr. Boardman states that the union's three glass bulletin boards which are locked with keys, including the warehouse board, were installed by Albertsons in June or July, 1990 during his tenure as a business agent and that a number of shop stewards had keys for the boards. Mr. Boardman

states that although the bulletin boards were initially used for official union notices, soon after their installation, other materials were regularly posted on the boards. Mr. Boardman insists that campaign material for Mr. Mireles was posted on the warehouse board for the 1991 International officer election and subsequent local union officer elections. Mr. Boardman stated that he instructed shop stewards to post campaign literature for Mr. Mireles and remove any material for candidates or slates opposing Mireles. Mr. Boardman noted that Mr. McDonald was one of his shop stewards. Mr. Boardman mentioned that Albertsons was a very politically charged environment and that campaign material was continuously posted and removed by stewards supporting different candidates/slates.

The Election Officer credits the testimony of Mr. Boardman regarding the posting of pro-Mireles campaign material on the union's warehouse bulletin board in the 1991 International Officer Election and subsequent local union officer elections. The Election Officer considers Mr. Boardman the most neutral witness in light of his retirement from the local union in December, 1995. The Election Officer also credits the testimony of the Mr. McDonald regarding the posting of campaign material for the Carey and Mireles campaign during the 1996 International Officer Election in light of Mr. Newman's reference to Mr. McDonald as someone with knowledge regarding what occurred at the Albertsons warehouse facility during the 1996 International Officer Election.

The **Rules** at Article VIII, Section 11(d) provide that:

[N]o restrictions shall be placed upon candidates' or members' preexisting rights to solicit support, distribute leaflets or literature, conduct campaign rallies, hold fund-raising events or engage in similar activities on employer . . . premises. Such facilities and opportunities shall be made available to all candidates and members on a nondiscriminatory basis.

An established past practice is "one source of preexisting rights." Stephenson, P-1204-LU763-PNW (December 2, 1996); In re Hall, 90 - Elec. App. -1 (KC) (October 4, 1990); Brinkman, P-151-LU305-PNW (September 18, 1995), aff'd, 95 - Elec. App. -21 (KC) (October 10, 1995). Where a pre-existing right is determined to exist, it is specifically protected by the **Rules** at Article VIII, Section 11(d), which prohibits any change or cutback during the election process. Jesses, P-183-LU612-SEC (February 5, 1991) (an employer cannot change its practice with respect to parking lot access). See also, Furst, PR-168-LU1145-NCE (August 25, 1998).

The testimonies of Messrs. Boardman and McDonald establish that there was a pre-existing right to post campaign literature on the union's bulletin board in the warehouse during the 1991 and 1996 International elections. Therefore, Mr. McDonald had a right to post the campaign material supporting Mr. Cammack and the Hoffa Unity Slate in the current International Officer Rerun Election. Therefore, Mr. Pharris' removal of the literature constituted a violation of the **Rules**. Mr. Pharris or Local Union 952 cannot now seek to modify these preexisting rights by enforcing the provisions of the collective bargaining

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agreement that restrict postings to official Union notices, in light of the history of stewards posting campaign material on these boards in 1991 and 1996 International Officer Elections.

Based on the foregoing, the protest LU PR-344 is GRANTED; and the protest in PR-384 is DENIED.

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 therefore orders the following:

- (1) Mr. Pharris shall cease and desist from removing any campaign material posted on the union's bulletin board in the warehouse at Albertsons, Bree, California facility; and
- (2) Mr. Pharris shall post the attached notice on the union's bulletin board in the warehouse by close of business on Friday, November 20, 1998 and this notice shall remain posted until December 3, 1998. By Monday, November 23, 1998, Mr. Pharris shall file an affidavit with the Election Officer (by facsimile and mail the original) demonstrating compliance with this posting requirement.

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.

Sincerely,

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Michael G. Cherkasky
Election Officer

cc: Kenneth Conboy, Election Appeals Master

**NOTICE TO TEAMSTER MEMBERS
FROM
MICHAEL G. CHERKASKY, ELECTION OFFICER**

Your stewards have the right to post campaign material for the International Rerun Officer Election on the union bulletin board in the *warehouse* at the Albertsons facility in Brea, California, since this bulletin board has been used in the past for similar postings.

The Election Officer has found that properly posted campaign materials have been removed by Business Agent Mike Pharris in violation of the *Rules*. Mr. Pharris has been ordered to cease and desist from removing any campaign material posted on the union's bulletin board in the warehouse.

No member is to interfere with the posting of campaign material. Members shall not remove or deface any campaign material posted on the bulletin board in the warehouse. Any such activity is a serious violation of the *Election Rules*.

Any protest you may have regarding your rights to engage in campaign activities or interference with those rights under the *Rules* should be filed with the Election Officer within the time period prescribed by the *Rules*.

Michael G. Cherkasky
Election Officer

This is an official notice and must remain posted until December 3, 1998, and must not be altered, defaced or covered by any other material.

