

May 28, 1999

VIA FACSIMILE

Jimi Richards  
Teamsters Local Union 528  
2540 Lakewood Ave. SW  
Atlanta, GA 30315

Donald S. Scott, President  
Teamsters Local Union 728  
2540 Lakewood Ave. SW  
Atlanta, GA 30315

Kenneth E. Hilbish, President  
Teamsters Local Union 528  
2540 Lakewood Avenue, SW  
Atlanta, GA 30315

Patrick J. Szymanski, General Counsel  
International Brotherhood of Teamsters  
25 Louisiana Avenue  
Washington, DC 20001

Joseph W. Morgan, Jr., President  
Georgia-Florida Conference of Teamsters  
P.O. Box 548, 211 Pontotoc Plaza  
Auburndale, FL XXX-XX-XXXX

**Re: Election Office Case No. SR-28-LU528-NYC**

Gentlemen:

A 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 Jimi Richards, a member of Local Union 728 and a Regional Organizer for the Georgia-Florida Conference of Teamsters, against Kenneth Hilbish, President of Local Union 528. Mr. Richards asserts that Mr. Hilbish sought to have him removed as Regional Organizer because of his involvement in the Election Officer's investigation of the protest docketed as SR-14.

The protest was investigated by Election Officer Representative Barbara C. Deinhardt.

According to Mr. Richards, on April 28, 1999 Kenneth Hilbish sent a letter to Joseph Morgan, Jr., the President of the Georgia-Florida Conference of Teamsters, seeking to have Mr. Richards removed as Regional Organizer, citing "political involvement and jurisdictional issues" and noting that "events over the past several months force me to be honest that I do not trust Mr. Richards nor is he welcome in Local 528." Mr. Richards notes that in the period immediately preceding the writing

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of the letter, he had been frequently consulted by Mr. Flamer in his ongoing dispute with Mr. Hilbish. It is this involvement, Mr. Richards claims, that led to the writing of the letter.

According to Mr. Hilbish, the dispute between him and Mr. Richards has been going on for a long time. He says that Mr. Richards is supposed to be assisting three locals in the Atlanta area — Locals 528, 728 and 1129 — but in practice, devotes his time exclusively to Local 728. Mr. Hilbish had previously written to Mr. Morgan on May 14, 1998, asking to have Mr. Richards removed for similar reasons. For this reason, and because he did not know that Mr. Richards had any part in the Flamer investigation until after the April 28, 1999 letter was written, there is no evidence that the letter was improperly motivated. Mr. Morgan confirms that he has stressed to Mr. Richards in the past the importance of getting along with all the union presidents in his area and of figuring out the appropriate jurisdiction for potential new members before turning the members or the organizing drive over to a particular local.

It is not within the authority of the Election Officer to determine if the charges made by Mr. Hilbish against Mr. Richards concerning his handling of different organizing drives are warranted or not. The sole question is whether the letter making the charges was motivated by considerations related to the International election or to the Election Officer's processes or were motivated by unrelated issues. In this case, as evidence to support his allegation that Mr. Hilbish's action was motivated by Mr. Richards' involvement with Mr. Flamer, Mr. Richards presents the timing of the April 28 letter and its reference to political considerations and a lack of trust caused by the events of the past months.

It is true that Mr. Hilbish had been notified of the protest in SR-14 on the morning of April 28, at about the same time as he sent the letter to Mr. Morgan, although he did not receive a fax of it until around 1:00 that afternoon. Mr. Hilbish denies knowing that Mr. Flamer had been consulting with Mr. Richards about protest-related issues or issues related to the election. Mr. Hilbish cites several other precipitating incidents that occurred in the days just before the sending of the letter to explain its timing. He states that several days before the letter he learned that the convention workers who had been organized into Local 728 by Mr. Richards because Mr. Richards said they were drivers within Local 728's jurisdiction were in fact warehouse workers within Local 528's jurisdiction. A few weeks before sending the April 28, 1999 letter, Mr. Hilbish learned in his capacity as Acting Warehouse Director (a position that he assumed in late March) that Sigma, a shop that Mr. Richards had organized into Local 728, was a subsidiary of Sysco, a food distribution company within Local 528's jurisdiction. He concluded from these two incidents that the problems that had led him to write a letter to Joe Morgan in 1998 were recurring and so, on the morning of April 28 before he learned about the SR-14 protest, he wrote the instant letter. His reference to "political considerations" stems from his belief that Mr. Richards has been cooperating with Doug Mims to organize workers into Local 728 rather than 528 to punish Mr. Hilbish for his support of Mr. Hoffa. His reference to events in the past several months that have led him to mistrust Mr. Richards is to the events involving the convention workers and Sigma.

The **Rules**, at Article VIII, Section 11(f), prohibit "[r]etaliation or threat of retaliation by . . . any subordinate body . . . any employer or other person or entity against a Union member . . . for exercising any right guaranteed" under the **Rules**. To

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demonstrate retaliation, a protester must show that conduct protected by the **Rules** was a motivating factor in the decision or the conduct in dispute. Thus, the protester must show that Mr. Hilbish sought his termination because he was advising Mr. Flamer in his protest, as he has alleged. The Election Officer will not find retaliation if he concludes that the union would have taken the same action even in the absence of the protected conduct. See Gilmartin, P-032-LU245-PNJ, (January 5, 1996), aff'd, 95 - Elec. App. - 75 (KC) (February 6, 1996); Leal, P-051-IBT-CSF (October 3, 1995), aff'd, 95 - Elec. App. - 30 (KC) (October 30, 1995); Wsol, P-095-IBT-CHI (September 20, 1995), aff'd, 95 - Elec. App. - 17 (KC) (October 10, 1995). Cf., Wright Line, 251 NLRB 1083 (1980), enforced, 662 F.2d 899 (1st Cir. 1981), cert. denied, 455 U.S. 989 (1982).

The Election Officer has repeatedly held that the existence of a reasonable independent basis for a discharge or removal from an appointed office defeats an allegation of improper motivation, so long as such basis does not form an excuse for or is not a pretext for conduct or action which is actually in violation of the **Rules**.

The protester's activities in support of Mr. Flamer and his protest of Mr. Hilbish's violation of the **Rules** constitute protected activity under the **Rules**. In this case, however, there is no evidence that Mr. Hilbish had any knowledge of Mr. Richards' protected activity. On the other hand, there is ample evidence of a long-standing dispute between Mr. Richards and Mr. Hilbish having nothing to do with the SR-14 protest.

Accordingly, the protest is DENIED.

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

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Copies of the request for hearing must be served on the parties listed above as well as upon the Election Officer, 444 N. Capitol Street NW, Suite 445, Washington, D.C. 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  
Barbara C. Deinhardt, Esq.