

**OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS**

IN RE: LEEDHAM SLATE,)	Protest Decision 2006 ESD 388
)	Issued: November 2, 2006
Protestor.)	Case No. P-06-359-102706-HQ
_____)	

The Tom Leedham Strong Contracts Good Pension Slate filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2005-2006 IBT International Union Delegate and Officer Election (“*Rules*”). The protest alleged that Leedham supporters were denied access to employee parking lots at an employer facility, in violation of Article VII, Section 12(e) of the *Rules*.

Election Supervisor representative Maureen Geraghty investigated this protest.

Findings of Fact

On October 24, 2006, Ed Taylor, Jim Price and Jose Rodriguez, all members of Local Union 107, attempted to campaign in the employee parking lot at Aluminum Shapes in Delair, New Jersey. Security personnel approached the campaigners, informed them that company policy did not permit campaigning anywhere on company premises and directed them to leave.

On October 25, Taylor returned to the facility with Local Union 107 member Kevin Lockwood. That day, security personnel again directed them to leave the employee parking lot area. Taylor and Lockwood attempted unsuccessfully to persuade the employer of their legal rights to obtain access to the employee parking lot. Once it became clear they would not obtain access, they again left the premises.

The employer explained its decision to bar campaign activity as a safety measure. Large flatbed trucks loaded with scrap metal are driven through the employee parking lot area; scrap occasionally falls from the trucks, striking vehicles. The employer stated its concern that campaigners not be struck by the falling scrap metal debris and that employees not stop to take literature in the middle of the truck thoroughfare.

Analysis

Among the campaign rights the *Rules* protect is the right candidates for International office have to “distribute literature and/or otherwise solicit support in connection with such candidacy in any parking lot used by Union members to park their vehicles in connection with their employment,” subject to certain limitations. *Rules*, Article VII Section 12(e) (the “parking lot access rule”). This provision is the same as one contained in the rules governing earlier IBT International Union Delegate and Officer Elections. *See* 2001 IBT Election Rules, Art. VII, § 11(e); 1996 IBT Election Rules, Art. § 11(e). Specifically, Article VII, §12 (e) of the 2006 *Rules* provides:

- e) Subject to the limitations in this Subsection, (i) a candidate for delegate or alternate delegate and any member of the candidate's Local Union may distribute literature and/or otherwise solicit support in connection with such candidacy in any parking lot used by that Local Union's members to park their

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vehicles in connection with their employment; (ii) each member of a candidate's Local Union has the reciprocal right to receive such literature and/or solicitation of support from such candidate or candidate's advocate; (iii) a candidate for International office and any Union member within the regional area(s) in which said candidate is seeking office may distribute literature and/or otherwise solicit support in connection with such candidacy in any parking lot used by Union members to park their vehicles in connection with their employment in said regional area(s); (iv) each member of the International Union who is employed within the regional area(s) in which said candidate is seeking office has the reciprocal right to receive such literature and/or solicitation of support from such candidate for International office or candidate's advocate.

The foregoing rights are available only in connection with campaigning during the 2005-2006 IBT International Union Delegate and Officer Election conducted pursuant to the Consent Order and only during hours when the parking lot is normally open to employees. The rights guaranteed in this Subsection are not available to an employee on working time, may not be exercised among employees who are on working time and do not extend to campaigning which would materially interfere with the normal business activities of the employer. An employer may require reasonable identification to assure that a person seeking access to an employee parking lot pursuant to this rule is a candidate or other member entitled to such access. Nothing in this Subsection shall entitle any candidate or other Union member to access to any other part of premises owned, leased, operated or used by an employer or to access to a parking lot for purposes or under circumstances other than as set forth herein.

The foregoing rights are presumptively available, notwithstanding any employer rule or policy to the contrary, based upon the Election Supervisor's finding that an absence of such rights would subvert the Consent Order's objectives of ensuring free, honest, fair and informed elections and opening the Union and its membership to democratic processes. Such presumption may be rebutted, however, by demonstrating to the Election Supervisor that access to Union members in an employee parking lot is neither necessary nor appropriate to meaningful exercise of democratic rights in the course of the 2005-2006 election. An employer seeking to deny access to Union members in an employee parking lot may seek relief from the Election Supervisor at any time.

As the United States District Court has repeatedly observed, access to parking lots where members park their vehicles is an important political right that is available to all IBT members. The parking lot access rule is based on findings that in-person campaigning in parking lots is the only practical method of realizing the democratic reforms to the IBT international officer election process mandated by the Consent Decree. *United States v. IBT*, 27 F. Supp. 2d 436 (S.D.N.Y. 1998).

Employer interests are recognized and balanced with those of the Consent Decree in the parking lot access rule. Access is allowed only for the purpose of conducting campaign activity relating to the IBT international union delegate and officer election. Employers may request reasonable identification but IBT members may not be barred from access absent an employer

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showing that access is neither necessary nor appropriate to members' meaningful exercise of democratic rights.

Our investigator discussed the parking lot access rule with the employer. The employer has agreed to permit access to the employee parking lot area provided that the safety of the protestor and the other campaigners can be assured. To that end, the employer has agreed to provide a security guard to oversee the campaigning so that the campaigners and employees do not stand in the thoroughfare when scrap metal on flatbed trucks. Leedham supporters will return to the employer parking lot area to campaign on November 3, 2006 and the employer has agreed to permit campaigning in the employee parking lot area on that date subject to the above conditions. Based on the foregoing, we deem this protest RESOLVED.

Any interested party not satisfied with this determination may request a hearing before the Election Appeals Master within two (2) working days of receipt of this decision. The parties are reminded that, absent extraordinary circumstances, no party may rely upon evidence that was not presented to the Office of the Election Supervisor in any such appeal. Requests for a hearing shall be made in writing, shall specify the basis for the appeal and shall be served upon:

Kenneth Conboy
Election Appeals Master
Latham & Watkins
885 Third Avenue, Suite 1000
New York, New York 10022
Fax: (212) 751-4864

Copies of the request for hearing must be served upon the parties, as well as upon the Election Supervisor for the International Brotherhood of Teamsters, 1725 K Street, N.W., Suite 1400, Washington, D.C. 20006-1416, all within the time prescribed above. A copy of the protest must accompany the request for hearing.

Richard W. Mark
Election Supervisor

cc: Kenneth Conboy
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DISTRIBUTION LIST (BY EMAIL UNLESS OTHERWISE SPECIFIED):

Bradley T. Raymond, General Counsel
International Brotherhood of Teamsters
25 Louisiana Avenue, NW
Washington, DC 20001-2198
braymond@teamster.org

David J. Hoffa
Hoffa 2006
30300 Northwestern Highway, Suite 324
Farmington Hills, MI 48834
David@hoffapllc.com

Barbara Harvey
645 Griswold Street
Suite 3060
Detroit, MI 48226
blmharvey@sbcglobal.net

Ken Paff
Teamsters for a Democratic Union
P.O. Box 10128
Detroit, MI 48210
ken@tdu.org

Daniel E. Clifton
Lewis, Clifton & Nikolaidis, P.C.
275 Seventh Avenue, Suite 2300
New York, NY 10001
dclifton@lenlaw.com

Stefan Ostrach
1863 Pioneer Parkway East, #217
Springfield, OR 97477-3907
saostrach@gmail.com

Aluminum Shapes
9000 River Road
Delair, NJ 08110

William Hamilton, President
IBT Local Union 107
2845 Southampton Road
Philadelphia, PA 19154
bhamilton@teamsters107.com

Maureen Geraghty
Geraghty Law Firm
426 Old Salem Road
Winston-Salem, NC 27101
mg@geraghtylawfirm.com

Jeffrey Ellison
510 Highland Avenue, #325
Milford, MI 48381
EllisonEsq@aol.com