

IN RE:

JIMI RICHARDS

00 - Elec. App. – 004 (KC)

This matter is an appeal from the Election Administrator's decision, dated August 7, 2000, Office of the Election Administrator Case No. PR-071101-AT, Protest Decision 2000 EAD 11. The request for a hearing was filed by Earl Parker, a member of Local 728 on August 11, 2000.

A hearing was held before me on August 18, 2000. The following persons were heard by way of teleconference: Jeffrey Ellison, Esq. for the Election Administrator's Office; Mr. Michael Weissman, Esq. for the International Brotherhood of Teamsters; Paul Levy, Esq. for the protester Mr. Jimi Richards Richards and Mr. Earl Parker.

This matter turns upon a pure credibility determination. Mr. Eric Robertson, a Local 728 member apparently told the Election Administrator that Mr. Parker, a Business Agent at Local 728, described himself as a "watch dog" as he sought attendance at a members only TDU meeting being conducted in a private section of a restaurant in College Park, Georgia. Mr. Parker asserts that a) the invitation could be read as inviting all members of local 728 to the meeting b) the doors to the meeting were opened and c) he went to the meeting to confront unidentified union politics adversaries who had been anonymously attacking the character of his deceased father on a web site.

Citing previous decisions sustaining protests based on surveillance activities by union authorities at off work site locations as chilling to political activity and thereby anathema

to the democracy building goals of the Consent Degree, the Election Administrator seized upon the “watchdog” comment, ruled that Parker had said it, and found him in violation of the Rules for the 2000-2001 IBT International Union Delegate and Officer Election (“Rules”).

There were in attendance at this meeting numerous others, apparently none of whom were asked by the Election Administrator if they heard Parker use the work “watchdog” to describe his purpose at the meeting.

Also, in a letter to the Election Appeals Master dated August 20, 2000 the protester Jimi Richards states that Robertson repeated Parker’s “watchdog” comment “to us as a group,” at 1. The Election Administrator did not confirm this either.

Furthermore, we have examined the flyer announcing the meeting and conclude that it is in fact ambiguous with respect to the attendance of non-members. Additionally, it was confirmed at the hearing that Parker did in fact make reference to the issue involving his deceased father, a point ambiguously referred to in the decision, as neither a stated fact at the meeting nor a post protest justification for being at the meeting. Finally, the Election Administrator did not state the basis of his determination, in spite of Parker’s denial, that Parker described himself as present in the capacity of a “watchdog”. Credibility determinations may not be arbitrary, must be based on objective fact or observation, and should be, at least briefly, justified, especially where, as here, such determination is decisive to the disposition.

Accordingly, the decision is reversed, and the matter is remanded for further investigation in accordance with this opinion.

Kenneth Conboy
Election Appeals Master

Dated: August 29, 2000