

IN RE:

RICHARD BERG

01 - Elec. App. – 061(KC)

This matter is an appeal from the Election Administrator’s (the “EA”) decision 2001 EAD 267, issued March 26, 2001. The hearing was requested by Richard Berg, one of the protestors and a member of Teamsters Local Union 743 in Chicago, Illinois.

A hearing was held before me on April 6, 2001. The following persons were heard by way of teleconference: Jeffrey J. Ellison, Esq. for the Election Administrator’s Office; Mr. Berg; and Joseph Burns, Esq., on behalf of Mr. Berg. This office from Mr. Berg received an additional submission on April 6, 2001.

Mr. Berg’s protest¹ alleged that the University of Chicago Hospitals (the “Hospital”) retaliated against him for exercising his right to campaign. Mr. Berg argues that the Hospital’s no-solicitation policy infringes on members’ rights to campaign on employer property, and that the Hospital’s penalty against him for exercising that right was discriminatory and excessive.

The Hospital has a long-standing policy prohibiting the distribution of literature in any manner for any purpose during work time (See, Page 2, 2001 EAD 267 (March 26, 2001)). The EA’s investigation found that Mr. Berg was distributing campaign literature in a work area during work time, a clear violation of Hospital policy. Since he was reprimanded with a verbal warning less than a year before for similar activity, the Hospital then suspended Mr. Berg

¹ The protest filed by Michael Corrigan, a member of Local 743, which alleged that Mr. Berg violated the Rules by campaigning on employer time was denied. The EA, although finding that Mr. Berg’s campaigning was

pending termination, which was later converted to a 3-day disciplinary layoff. Mr. Berg claims this suspension was too harsh and that his punishment should have been a written warning. Suspensions of this nature, he argues, are usually reserved for more serious infractions, such as staff drug use and physical altercations. At the hearing, Mr. Burns, on behalf of Mr. Berg also argued that Mr. Berg's behavior was selectively enforced, since Mr. Berg alleged that there were other Hospital employees handing out literature of the opposition slate who were not disciplined.

The EA concluded, and counsel for Mr. Berg agreed, that although the Rules do protect pre-existing rights to campaign on employers' property during non work time, they do not protect against campaigning done on work time. As for his claim of selective enforcement, Mr. Berg could not provide evidence to show that the others he claims were distributing materials were doing so on work time and that the Hospital knew and took no action against them.

The EA's findings of fact are to be given substantial deference. I concur with the findings and analysis presented by the EA in this matter. Accordingly, I affirm the EA's decision in all respects.

____s/Kenneth Conboy_____
Kenneth Conboy
Election Appeals Master

Dated: April 23, 2001

incidental to work, concluded even if this was not the case, any violation of the Rules was remedied by the employer's disciplinary action.