

IN RE:

LORETTA DEVASIER

01 - Elec. App. – 071 (KC)

This matter is an appeal from the Election Administrator’s (the “EA”) decision 2001 EAD 323, issued April 19, 2001. The hearing was requested by Bob Whitaker, alternate delegate candidate on the Zuckerman/Washburn Unity Slate and member of Local Union 89 in Louisville, Kentucky¹.

A hearing was held before me on May 1, 2001. The following persons were heard by way of teleconference: Jeffrey J. Ellison, Esq. for the Election Administrator’s Office and Mr. Whitaker. An additional submission was received from Mr. Whitaker on April 24, 2001.

It was alleged in this protest that Mr. Whitaker was compliant with Brown-Forman’s restricting access to their parking lot to members of the United Rank and File Slate. The EA’s investigation found that Loretta DeVasier, the protestor and member of the United Rank and File Slate, was denied access to the parking lot at the Brown-Forman Early Times distillery (the “Facility”) by the security guard the morning of March 16, 2001. Later that day, when fellow slate member Dale Ferguson attempted access to the same lot, the security guard called Mr. Whitaker, a shop steward at the Facility, to ask him if Mr. Ferguson had a right to campaign in the parking lot. Mr. Whitaker told the guard that he was unaware of any right. Based on this statement, the security guard refused Mr. Ferguson access and the instant protest was filed. The EA granted the protest and ordered Brown-Forman to comply with Article VII,

¹ An appeal was also requested by William A. Blodgett, Esq., on behalf of Brown Forman Corporation (“Brown-Forman”) on April 20, 2001. However, prior to the hearing, negotiations between the EA and Brown-

Section 11(e) of the Rules concerning parking lot access and for Mr. Whitaker to cease and desist from any further violations of this section.

Mr. Whitaker claims that he was unaware of the EA's ruling in Thornsberry, 2001 EAD 234 (March 13, 2001), which ordered Local Union 89 to mail and post a notice, "inform[ing] its representatives and employers that no one may interfere with a members' right to campaign in the parking lots of employers of Local 89 members." (See Page 3, 2001 EAD 234 (March 13, 2001), since this notice was to be mailed on March 19, 2001, three days after the Facility incident. He also argues that the guard had already made up his mind to refuse to let Mr. Ferguson onto the property, and that he, Mr. Whitaker, had no authority to let anyone on or off the property.

Although the factual findings of the EA are to be given substantial deference, I disagree with his analysis as to Mr. Whitaker's role in this matter. Based on these facts, I find that Mr. Whitaker could not have known that access to the Facility parking lot was permissible, since the notice ordering access did occur until after the March 16, 2001 Facility incident. In addition, Irwin Cutler, Esq., attorney for Local Union 89, also told the EA's investigator that Mr. Whitaker did not know of the access right on March 16, 2001, but did become aware of it after the posting of the Thornsberry notice.

Therefore, I reverse the EA's decision as to Mr. Whitaker and find him absolved of any culpability in this incident.

_____/s/Kenneth Conboy_____
Kenneth Conboy
Election Appeals Master

Dated: May 14, 2001

Forman resulted in the instant decision and remedy against Brown Forman to be withdrawn. See 2001 EAD 333 (May 1, 2001).