



OFFICE OF THE ELECTION OFFICER  
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
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Washington, DC 20001

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Election Officer

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October 8, 1991

**VIA UPS OVERNIGHT**

Daniel Torres, Jr.  
2484-E Sundial Drive  
Chino Hills, CA 91709

Don Baker  
Senior V. P., Human Resources  
Stater Bros. Markets  
21700 Barton Road  
Colton, CA 92324

Everett J. Roberts  
Trustee  
IBT Local Union 63  
1616 W. Ninth St.  
Room 205  
Los Angeles, CA 90015

**Re: Election Office Case No. P-942-LU63-CLA**

Gentlemen:

A protest was filed pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules") by Daniel Torres, Jr., a member of Local Union 63. Mr. Torres alleges that on September 30, 1991, he and Alex McDonagh, a Local 63 shop steward, were denied access to the Barton Road, Terrace Street and DeBarry Street warehouse facilities of Stater Brothers Markets ("Stater") for the purpose of campaigning. Neither Mr. Torres nor Mr. McDonagh are employees of Stater. The protest was investigated by Regional Coordinator Geraldine Leshin.

The three Stater warehouse facilities are located in close proximity to each another. Practically all IBT members employed at all three facilities utilize a single parking lot. In order to obtain entry to any of the three warehouse facilities from the parking lot, all employees must exit the parking lot and cross public property. For instance, IBT members working at the Barton Road facility exit the parking lot through the driveway entrance, cross a public sidewalk and then Barton Road in order to enter the warehouse. Similarly, employees at the Terrace Street and DeBarry Street warehouse facilities exit the parking lot through the "back gate" and cross a large lot before entering the warehouse facilities in which they work.

Stater Brothers has had a uniform policy prohibiting entry to both the interior and exterior of its facilities by all persons other than its own employees. There is no evidence that the company has ever permitted IBT members not employed by it - except for Union representatives having official collective bargaining obligations - to gain entry either to the interior of any of its facilities or to its employee parking lot for any reason.

Article VIII, § 10(d) prohibits restrictions being placed upon IBT members' rights to engage in campaign activities on the premises of employers of IBT members. Pre-existing rights are those that derive from substantive law or as a result of the prior practices of an employer. Substantive law provides no right to IBT members not employed by a particular employer access to the interior of such employer's facilities. Since the investigation determined that Stater has no prior practice of permitting such access, it has no obligation to do so in connection with the 1991 IBT International Union officer election.

Under substantive law, IBT members not employed by a particular employer have a limited right under certain circumstances to engage in campaign activities in non-work areas outside of the plant, terminal or other facility in locations such as employee parking lots. Where the location of the employer's facility prevents face to face contact with the IBT members who work at such facility without access to the employer's private property, IBT members not employed by that employer have the right to such access. Jean Country, 291 NLRB No. 4 (1988); National Maritime Union v. NLRB, 867 F. 2d 767 (2nd Cir., 1989); Lechmere v. NLRB, F. 2d 313 (1st. Cir., 1990). Since the right is a right provided by substantive law, it is a pre-existing right within the meaning of Article VIII, § 10(d) of the *Rules*.

In the instant case, however, IBT members not employed by Stater are able to obtain face to face contact with the IBT members who work there for campaigning purposes without intrusion on Stater's private property. The IBT members employed by Stater must traverse on foot public property between the location of the employee parking lot in which they park and the particular warehouse facility at which such members work. IBT members not employed by Stater may stand on the public sidewalk on Barton Road and contact all IBT members who work at that facility. Similarly, IBT members not employed by Stater may stand in or on the lot at the "back gate" of the employee parking lot and have contact with all IBT members employed at the Terrace Street and DeBarry Street warehouses. Since IBT members not employed by Stater may obtain face to face contact for campaigning purposes with the IBT members employed by Stater without intruding upon Stater's private property, neither substantive law nor Article VIII, § 10(d) of the *Rules* requires that they be permitted to enter on to the parking lot for such campaign activities.

The investigation found no evidence that IBT members not employed by Stater have ever been permitted access to the interior of Stater's warehouse facilities. IBT members not employed by Stater may campaign among the IBT members so employed without entry on to the employee parking lot or any other property of Stater. Accordingly, this protest is DENIED.

Daniel Torres, Jr.  
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If any interested party is not satisfied with this determination, they may request a hearing before the Independent Administrator within twenty-four (24) hours of their 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 Independent Administrator Frederick B. Lacey at LeBoeuf, Lamb, Leiby & MacRae, One Gateway Center, Newark, New Jersey 07102-5311, Facsimile (201) 622-6693. Copies of the request for hearing must be served on the parties listed above, as well as upon the Election Officer, IBT, 25 Louisiana Avenue, N.W., Washington, D.C. 20001, Facsimile (202) 624-8792. A copy of the protest must accompany the request for a hearing.

Very truly yours,

  
Michael H. Holland

MHH/mjv

cc: Frederick B. Lacey, Independent Administrator  
Geraldine L. Leshin, Regional Coordinator