

October 31, 1995

VIA UPS OVERNIGHT

Michael D. Torpey
1017 S.E. 30th Avenue
Portland, OR 97214

Clair Ueltschi
Coe Manufacturing
7930 S.W. Hunziker Street
Tigard, OR 97223

Tony L. Andrews, Secretary-Treasurer
Teamsters Local Union 305
1870 N.E. 162nd Avenue
Portland, OR 97230

Re: Election Office Case No. P-162-LU305-PNW

Gentlemen:

A pre-election protest was filed pursuant to Article XIV, Section 2(b) of the *Rules for the 1995-96 IBT International Union Delegate and Officer Election* (“*Rules*”) by Michael D. Torpey, a member of Local Union 305, who was a candidate for alternate delegate on the “Working Teamsters” slate. The Election Officer deferred the protest for consideration post-election pursuant to Article XIV, Section 2(f)(2).

The protester alleges: (1) “Team 305,” the slate opposing the Working Teamsters, used union resources to mail campaign literature to Local Union 305 members; (2) Team 305 slate member and Local Union 305 Secretary-Treasurer Tony Andrews campaigned for the support of two union stewards on union time; (3) Mr. Andrews removed a Working Teamsters flyer from a bulletin board at Coe Manufacturing (“Coe” or the “Employer”); (4) the Employer’s manager, Clair Ueltschi, removed a Working Teamsters flyer from a bulletin board at Coe; (5) a Local Union 305 member passed out Team 305 campaign literature on company time;¹ and (6) Mr. Andrews threatened the protester due to his opposing Mr. Andrews in the delegate elections.

¹The protester subsequently requested withdrawal of this allegation.

Mr. Andrews responds on behalf of the Team 305 slate by denying he used union resources or time for campaigning. Mr. Andrews also denies removing Working Teamsters literature or threatening the protester.

The Employer contends it removed all campaign literature from its union bulletin boards without regard to which slate the literature supported.

Ballots in the Local Union 305 delegate election were mailed on August 31, 1995. On September 21, 1995, the ballots were counted under the supervision of the regional coordinator. There were six delegate and two alternate delegate positions to be filled. Six delegate candidates and two alternate delegate candidates ran on the Team 305 slate. Five delegate candidates and two alternate delegates ran on the Working Teamsters slate. There was one independent candidate for alternate delegate. All of the Team 305 candidates were elected.

The Election Office records show 1,125 valid ballots were counted. The ranking of candidates was as follows:

Delegates:

<u>Rank</u>	<u>Name</u>	<u>Vote</u>	<u>Slate or Independent</u>
1	Tony Andrews	879	Team 305
2	Tom Watt	847	Team 305
3	Dave Eastman	834	Team 305
4	John P. Trout	831	Team 305
5	Geri Hayes	823	Team 305
6	Michael J. Conn	805	Team 305
7	Jim Brinkmann	229	Working Teamsters
8	Linda Hester	216	Working Teamsters
9	Antoine (Tony) LaChappelle	212	Working Teamsters
10	John Simpson	201	Working Teamsters
11	Marv Hurt	196	Working Teamsters

Alternate Delegates:

<u>Rank</u>	<u>Name</u>	<u>Vote</u>	<u>Slate or Independent</u>
1	Roy Dwiggins	818	Team 305
2	Monty N. Hordichok	793	Team 305
3	Alvin "Bud" Smith	211	Working Teamsters
4	Mike Torpey	176	Working Teamsters
5	Al Raymond	39	Independent

This protest was investigated by Adjunct Regional Coordinator Julia Stern McCarty.

I. Use of Union Resources

A. Mailing of Campaign Literature

Just prior to a Local Union 305 picnic on August 13, 1995, Team 305 mailed campaign literature to union members, including a flyer containing the following:

If you plan on attending the Local Union picnic on Sunday -
BEWARE of potential political activity by the opposing slate.
We feel the picnic is for the enjoyment of members and their
families and not a political event.

There is no dispute that the mailing was financed by Team 305, not by the local union. The protester argues that since the August 13 picnic itself was union-financed (in addition to ticket sales), the mailing of the flyer by Team 305 allowed the slate to use the picnic for its political gain because the flyer undermined the ability of the Working Teamsters slate to campaign at the picnic.

The protester admits the Working Teamsters slate was not limited from talking to members at the picnic and even distributed some fortune cookies containing campaign slogans as "fortunes." Since there is no evidence that the flyer limited the Working Teamsters' right to participate in campaign activities, there is no violation of the **Rules**.

B. Campaigning on Union Time

Team 305 member and Secretary-Treasurer Andrews met with two shop stewards during the late afternoon on two days in August 1995 to encourage the stewards to support Team 305. Mr. Andrews asserts that he took his dinner break on each day in order to hold the meetings. One of the stewards recalls that at one meeting, Mr. Andrews mentioned being on his dinner break.

Article VIII, Section 11(b) states, in pertinent part:

Accordingly, officers and employees (and other members) of the Union may not campaign on time that is paid for by the Union. Campaigning incidental to regular Union business is not, however, violative of this section. Further, campaigning during paid vacation, paid lunch hours or breaks, or similar paid time off is also not violative of this section.

The protester does not refute Mr. Andrews' claim that he was on breaks for the meetings, at which time, under the **Rules**, he is permitted to campaign. There is, therefore, no violation.

II. Removal of Campaign Literature from Bulletin Boards

A. Alleged Removal by Mr. Andrews

The protester alleges that while he was at work at the back of the shop getting a drill bit in the Employer's annex building on August 24, 1995, he saw Mr. Andrews look both ways, remove a Working Teamsters flyer from the bulletin board, and quickly leave the area. Another employee confirms the bulletin board is visible from where the protester stood, from a distance of approximately 50 or 60 feet.

Mr. Andrews denies he removed the flyer. He claims that in addition to election postings, the bulletin board contained notices of a recent pension change and the union picnic, which had already occurred. He suggests the protester may have seen him removing an outdated picnic notice.

The protester asserts he is certain that Mr. Andrews removed a Working Teamsters flyer. He was very familiar with the location of the flyer on the bulletin board because he had repeatedly replaced the flyer in the upper left-hand corner of the bulletin board after it had been removed. Another employee corroborated that the protester had replaced the flyer on several occasions. The protester states that he suspected Mr. Andrews had previously removed the flyer, and this was confirmed when the protester observed him removing the flyer on August 24, 1995.

The Election Officer credits the protester's statements on the removal of the Working Teamsters flyer by Mr. Andrews. The protester had an effective vantage point to view the bulletin board, and had not accused Mr. Andrews prior to seeing him remove the flyer, despite his suspicion that Mr. Andrews was responsible for the repeated removals.

The right to post campaign literature is specifically protected in the **Rules**, which state at Article VIII, Section 11(d):

No restrictions shall be placed upon candidates' or members' preexisting rights to use employer or Union bulletin boards for campaign publicity . . . Such facilities and opportunities shall be made available to all candidates and members on a non-discriminatory basis.

In Brinkmann, P-151-LU308-PNW (September 18, 1995), aff'd, 96 - Elec. App. - 21 (KC) (October 10, 1995), the Election Officer found that by stopping its past practice of permitting posting of union literature on union bulletin boards, Coe deprived its employees of their preexisting rights, guaranteed by Article VIII, Section 11(d), to use union bulletin boards for campaign publicity.

Having found that Mr. Andrews removed campaign literature posted on a bulletin board at Coe, the Election Officer has found that the **Rules** were violated. However, this protest is being treated as a post-election protest and must therefore satisfy the requirement in Article XI, Section 1(b)(2) of the **Rules** which provides: "Post-election protests shall only be considered and remedied if the alleged violation may have affected the outcome of the election." Thus, a violation of the **Rules** alone is not grounds for setting aside an election unless there is a reasonable probability that the outcome of the election may have been affected by the violation. See Wirtz v. Local Union 410, 366 F.2d 438 (2nd Cir. 1966). To determine whether an effect

exists, the Election Officer determines mathematically whether the effect was sufficient in scope to affect the outcome of the election and/or whether there was a causal connection between the violation and the result or outcome of the election. Dole v. Mailhandlers, Local 317, 132 LRRM 2299 (D.C.M.D. Alabama 1989). Since the Election Officer has determined above that the **Rules** have been violated, the issue then becomes whether said violation affects the outcome of the election.

The Election Officer notes that the Working Teamsters had other opportunities to post literature at Coe. As the Election Officer found during the investigation of Brinkmann, the Employer has two bulletin boards in the annex building and one union bulletin board in its main plant. The instant protest concerns only one of the annex building bulletin boards. The removal was of one flyer, late in the delegate campaign. After August 30, 1995 when, as found in Brinkmann, Coe changed its practice and began prohibiting bulletin board posting, the Working Teamsters slate was deprived of posting rights to the same extent as Team 305. The Election Officer further notes the margin of victory in the election in which Team 305 prevailed was substantial.

Accordingly, post-election, the Election Officer does not find that the removal of one Working Teamsters flyer by Mr. Andrews affected the outcome of the election. Therefore, the Election Officer finds that there is no cause to order any remedy with respect to the Local Union 305 delegate election.

This does not mean, however, that the protest, wherein a serious violation of the Rules has been found by the Election Officer should not be remedied. See Clark, Case No. Post-69-LU420-CLA (May 15, 1991), aff'd, 91 - Elec. App. - 152 (SA) (May 28, 1991) (imposing remedy post-election for campaigning on union time not affecting outcome of election). The removal of literature from an employer bulletin board is a "serious transgression of the Rules." In re: Mabe, 91 - Elec. App. - 50 (SA) (January 29, 1991). Additionally, the right to use employer bulletin boards for campaign publicity will continue after the Local Union 305 delegate elections, when bulletin boards may be used for campaigning for the 1996 International officer elections. Therefore, as more fully described in the remedy section below, the Election Officer will order that Local Union 305 post a notice advising the members that their posting rights will be enforced.

B. Alleged Removal by the Employer

The protester alleges that on August 24, 1995, at approximately 10:00 a.m., an employee observed the Employer's manager, Clair Ueltschi, removing Working Teamsters campaign literature from the annex building bulletin board, while leaving Team 305 literature undisturbed. The employee states that when he witnessed this, he was standing right behind Mr. Ueltschi, close enough to touch him. The employee saw Mr. Ueltschi approach the bulletin board carrying papers, and waited to see if he was going to post a notice from management. The witness states he saw Mr. Ueltschi remove a Working Teamsters notice referring to "Fat Cats," while leaving Team 305 literature on the board. The employee was certain a Working Teamsters notice was removed because he had read it just before Mr. Ueltschi approached. Shortly thereafter, he told the protester about the incident. The protester went to the bulletin board and found Team 305 flyers but no Working Teamsters literature.

The Employer states that Mr. Ueltschi removed *all* campaign materials from the bulletin board, and that any Team 305 literature remaining there was inadvertently overlooked. The protester contends no one could have missed one of the Team 305 notices because they were printed on yellow paper, included the word "Caution," and were posted at the same height as the Working Teamsters literature that was removed.

The Election Officer credits the employee witness. He had no apparent interest in the protest. The recollections of the witness and the protester are quite specific. However, for the same reasons as set forth above, the Election Officer does not find this incident affected the outcome of the election. As noted above, the Working Teamsters had the same posting rights as Team 305. The wide margin of victory indicates it is unlikely the removal of one Working Teamster flyer by the Employer, or in combination with the similar incident involving Mr. Andrews, had an effect on the outcome of the election. Thus, there is no basis for ordering a remedy with respect to the election.

Furthermore, there will be no remedy imposed upon Coe for its interference with posting rights. Since the Employer was ordered in Brinkmann to post a notice assuring employees that it will respect their posting rights, there will be no additional remedy imposed upon Coe for its violation in the instant protest.

III. Alleged Threat

The protester alleges that on August 18, 1995, Tony Andrews accused him of telling members that Mr. Andrews received multiple salaries and pension accounts and angrily yelled, "You'll get yours next month on the 21st." Mr. Andrews claims he stated, "The members will decide on the 21st." A witness corroborates the protester, whom the Election Officer credits here.

Article VIII, Section 11(f) of the **Rules** states:

Retaliation or threat of retaliation by the International Union, any subordinate body, any member of the IBT, any employer or other person or entity against a Union member, officer or employee for exercising any right guaranteed by this or any other Article of the **Rules** is prohibited.

Threatening words or actions between supporters of opposing candidates in the context of ongoing animosity, and without a fight erupting, do not necessarily violate the **Rules**. Dunn, Case No. P-110-LU25-BOS (July 28, 1995), aff'd, 95 - Elec. App. - 8 (KC) (August 21, 1995). In the context of the various disputes between the protester and Mr. Andrews, the statement, "You'll get yours next month on the 21st" signifies a prediction of victory rather than a direct threat to cause harm or limit rights protected under the **Rules**. The Election Officer finds Mr. Andrews did not threaten the protester, in violation of the **Rules**.

Based on the foregoing, the protest is GRANTED in part and DENIED in part.

IV. Remedy

When the Election Officer determines that the **Rules** have been violated, she "may take whatever remedial action is appropriate." **Rules**, Article XIV, Section 4. In fashioning the appropriate remedy, the Election Officer views the nature and seriousness of the violation as well as its potential for interfering with the election process.

To remedy Local Union 305's interference with the employees' right to post campaign literature, the Election Officer orders Local Union 305 to sign and post the enclosed notice on the bulletin boards used for union posting in the annex building and the main facility. Two days after posting the notice, Local Union 305 shall send an affidavit to the Election Officer detailing its compliance with this order along with a copy of the signed notice.

Any interested party not satisfied with this determination may request a hearing before the Election Appeals Master within one day of 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:

Kenneth Conboy, Esq.
Latham and Watkins
885 Third Avenue
New York, NY 10022
Fax (212) 751-4864

Copies of the request for hearing must be served on the parties listed above as well as upon the Election Officer, 400 North Capitol Street, Suite 855, Washington, D.C. 20001, Facsimile (202) 624-3525. A copy of the protest must accompany the request for a hearing.

Sincerely,

Barbara Zack Quindel
Election Officer

cc: Kenneth Conboy, Election Appeals Master
Christine M. Mrak, Regional Coordinator
Julia Stern McCarty, Adjunct Regional Coordinator

NOTICE TO TEAMSTER MEMBERS FROM TEAMSTERS LOCAL UNION 305

Local Union 305 recognizes that you have the right to participate in campaign activities on behalf of candidates for International officer in the upcoming IBT election.

Local Union 305 recognizes that you have the right to post campaign material on the large bulletin board by the time clock in the main plant, the large bulletin board by the vending machines in the annex, and the small bulletin board in the annex instrument room by the time clock at Local Union 305, since such bulletin boards have been used in the past for similar postings.

No one, no union representative or member, nor company official, can remove, intimidate, harass, threaten or prohibit you from posting campaign material on bulletin boards, as described above.

Local Union 305 will not interfere with your right to post campaign material on the bulletin boards designated above in the same manner as used in the past.

Tony L. Andrews, Secretary-Treasurer
Local Union 305

This is an official notice and must remain posted for 30 consecutive days from the day of posting, and must not be altered, defaced or covered by any other material.

Prepared and Approved by Barbara Zack Quindel, Election Officer, IBT.