

OFFICE OF THE ELECTION ADMINISTRATOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: ERIK JENSEN,)	
)	Protest Decision 2000 EAD 37
)	Issued: October 13, 2000
Protector.)	OEA Case No. PR082101MW
_____)	

Erik Jensen, a member of Local 320, filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2000-2001 IBT International Union Delegate and Officer Election (“*Rules*”), against Fleming Food Company (“FFC”). The protestor alleges that FFC violated his right under Article VII, Section 11(e) of the *Rules* to limited campaign access to FFC’s employee parking lot at its warehouse facility on Marshall St. N.E. in Minneapolis.

Election Administrator representative Dennis Sarsany investigated the protest.

Article VII, Section 11(e) of the *Rules* states that “candidate[s] for delegate or alternate delegate and any member of the candidate’s Local Union may distribute literature and/or otherwise solicit support in connection with such candidacy in any parking lot used by that Local Union’s members to park their vehicles in connection with their employment.” Section 11(e) further provides that “candidate[s] for International office and any Union member within the regional area(s) in which said candidate is seeking office may distribute literature and/or otherwise solicit support in connection with such candidacy in any parking lot used by [IBT] members to park their vehicles in connection with their employment in said regional area(s).” IBT members have the reciprocal right under the Article VII, Section 11(e) of the *Rules* to be so solicited and to receive literature offered for distribution.

These rights are available only in connection with campaigning during the 2000-2001 International Union delegate and Officer election conducted pursuant to the Consent Order¹. Such campaigning must occur “only during times when the parking lot is normally open to employees” and “do not extend to campaigning which would materially interfere with the normal business activities of the employer.” The rights guaranteed by Article VII, Section 11(e) “are not available to an employee on working time, [and] may not be exercised among employees who are on working time...”

¹ The “Consent Order” as that term is used in the *Rules* means “the March 14, 1989 agreement approved by the [United States District] Court [for the Southern District of New York, the Honorable David N. Edelstein presiding, and] entered into between and among the United States Government, the International Union and others in the case of *United States of America v. International Brotherhood of Teamsters, et al.*, 88 Civ. 4486 (DNE)(S.D.N.Y.), as amended, and all subsequent opinions, rulings and orders interpreting it.” *Rules, Definition 8.*

Additionally, the employer “may require reasonable identification to assure that a person seeking access to an employee parking lot pursuant to th[e] rule is a candidate or other [IBT] member entitled to such access.” Article VII, Section 11(e) also provides that nothing in its provisions “shall entitle any candidate or other [IBT] member to access to any other part of premises owned, leased, operated or used by an employer or to access to a parking lot for purposes or under circumstances other than as set forth herein.”²

These limited access rights are “presumptively available, notwithstanding any employer rule or policy to the contrary, based upon the Election Administrator’s finding that an absence of such rights would subvert the Consent Order’s objectives of ensuring free, honest, fair, and informed elections and opening the Union and its membership to democratic processes.” An employer however may rebut this presumption “by demonstrating to the Election Administrator that access to Union members in an employee parking lot is neither necessary nor appropriate to meaningful exercise of democratic rights in the course of the 2000-2001 election...[, and] may seek relief from the Election Administrator at any time.”

The limited-access rule is a necessary infringement upon employer property rights, and is limited so that such rights are infringed upon only to the extent necessary to implement the Consent Order goal of providing for “free, fair and democratic election[s].” *United States v. IBT*, 896 F. Supp. 1349, 1367 (S.D.N.Y. 1995), *aff’d*, 86 F.3d 271 (2d Cir. 1996). There, Judge Edelstein approved the limited-access rule, finding it “crucial to the achievement” of such an election process. *Id.* at 1367.

After discussion with the Office of the Election Administrator, FFC has agreed (as it has in past elections) to honor Article VII, Section 11(e) at its facilities and to resolve this protest by allowing IBT members their limited right to access to its employee parking lots in a manner consistent with the provisions and limitations of Article VII, Section 11(e) of the *Rules*. Specifically, FFC representative Terry Ruby has agreed that FFC will not deny campaigners access to portions of the FFC property convenient to the employee entrances to the Minneapolis warehouse, so long as the campaigners check in with company security prior to campaigning, provide sufficient identification (including their union cards), and otherwise comply with the limits placed by the *Rules* on parking lot access for campaign purposes. These conditions are consistent with Article VII, Section 11(e) of the *Rules*.

Under these circumstances, the Election Administrator concludes that further processing of this protest is unwarranted. The protester’s complaint has been addressed and the relief requested has been achieved. Accordingly, this protest is RESOLVED.

² Separately, Article VII, Section 11(f) of the *Rules* provides that “an employer’s discrimination in permitting access to its property shall constitute an improper contribution to the candidate(s) who benefit from such discrimination.”

Jensen, 2000 EAD 37
October 13, 2000

Any interested party not satisfied with this determination may request a hearing before the Election Appeals Master within two (2) working days of receipt of this decision. The parties are reminded that, absent extraordinary circumstances, no party may rely in any such appeal upon evidence that was not presented to the Office of the Election Administrator. Requests for a hearing shall be made in writing, shall specify the basis for the appeal, and shall be served upon:

Kenneth Conboy
Election Appeals Master
Latham & Watkins
Suite 1000
885 Third Avenue
New York, New York 10022
Fax: 212-751-4864

Copies of the request for hearing must be served upon all other parties, as well as upon the Election Administrator for the International Brotherhood of Teamsters, c/o International Brotherhood of Teamsters, 25 Louisiana Ave., NW, Washington, DC 20001, all within the time period prescribed above. A copy of the protest must accompany the request for hearing.

William A. Wertheimer, Jr.

William A. Wertheimer, Jr.
Election Administrator

cc: Kenneth Conboy
Dennis Sarsany
2000EAD37

Jensen, 2000 EAD 37
October 13, 2000

DISTRIBUTION LIST VIA FFC NEXT DAY AIR:

Patrick Szymanski
IBT General Counsel
25 Louisiana Ave. NW
Washington, DC 20001

Bradley T. Raymond
Finkel, Whitefield, Selik,
Raymond, Ferrara & Feldman
32300 Northwestern Highway
Suite 200
Farmington Hills, MI 48334

J. Douglas Korney
Korney & Heldt
30700 Telegraph Road
Suite 1551
Bingham Farms, MI 48025

Barbara Harvey
645 Griswold
Penobscot Building
Suite 1800
Detroit, MI 48226

Tom Leedham
18763 South Highway 211
Molalla, OR 97038

Betty Grdina
Yablonski, Both & Edelman
Suite 800
1140 Connecticut Ave. N.W.
Washington, D.C. 20036

Erik Jensen
4345 11th Ave. South
Minneapolis, MN 55407

Terry Ruby
Fleming Food Company
3501 Marshall Street, N.E.
Minneapolis, MN 55418

Pamela Hutton
Special Counsel
American Security Corporation
1717 University Avenue
St. Paul, MN 55104

IBT Local 120
2635 University Ave. West
Suite 120
St. Paul, MN 55114

IBT Local 320
3001 University Avenue S.E.
Minneapolis, MN 55414