

**OFFICE OF THE ELECTION ADMINISTRATOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS**

IN RE: TOM LEEDHAM RANK AND)	Protest Decision 2001 EAD 531
FILE POWER SLATE,)	Issued: October 30, 2001
)	OEA Case No. PR102211MW
Protestor.)	
)	
_____)	

The Tom Leedham Rank and File Power slate (the “Leedham slate”) 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*"). It alleges that Excel Corporation (“Excel”) and the Fort Morgan, Colorado police department had campaigners removed from Excel’s Fort Morgan plant after threatening them with arrest. The protest also states that the campaigners were removed immediately after Local 961 business agent Joseph Hartl entered the facility.

Election Administrator representatives Jason Weidenfeld and Carolina Santa Maria investigated the protest.

Findings of Fact

Excel’s Fort Morgan plant employs more than 1,600 Local 961 members. The Leedham slate planned to visit the Fort Morgan plant on Friday, October 19, 2001 and during the week leading up to the visit attempted unsuccessfully to contact Excel to ensure that parking lot access would be granted. On that Friday, three Leedham supporters campaigned in the plant’s parking lot, Local 556 president Melquiadez Peyrera, Local 435 member Sean Brailey, and Local 961 member Adan Morales.

The campaigners arrived at the Fort Morgan plant at about 1:00 p.m. and allege that they were asked by an Excel security guard to leave at 1:30 p.m. The campaigners did not leave and were met by another guard a short while later. They gave the second guard a copy of our [Advisory on Limited Right of Access to Employer Premises](#) (November 10, 2000). At around 2:25 p.m., according to Mary Ginther, the human resource manager at the Fort Morgan plant, she instructed her assistant, Tanya Teeter, to ask the campaigners to leave. The campaigners allege that Teeter said the campaigners would have to leave, that she had spoken with an attorney about the matter, and that the campaigners were ignorant about their rights. They refused to leave. At around 2:45 p.m., Ginther asked the campaigners to leave, and they again refused, claiming a legal right to campaign there and attempting to give Ginther what she describes as “some internet papers.” Ginther then contacted security to have the campaigners removed and, after that was unsuccessful, contacted the police. Before the police arrived, Morales, the only campaigner employed at the plant, says that he told the other campaigners that the

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shift change had ended and that there were not many people to meet anymore. Morales then left the other two campaigners for the evening.

According to the remaining campaigners, Ginther then brought four or five security workers to the area to prevent further campaigning. The campaigners allege that the security workers blocked the campaigners from interacting with the members and took flyers from them. The campaigners state that they were threatened with arrest but were ultimately allowed to leave the plant without being arrested.

At around the time when the police were at the plant, Excel's head of labor relations, Gary Bright, was reviewing the access provision and discussing it with our general counsel. Eventually, Excel permitted the campaigners to return to the parking lot. Ginther estimates that the campaigners were not permitted on the lot for 1 to 1½ hours.

Hartl denies any involvement in the events leading to the campaigners' removal. He claims that before and during the incident, he never communicated with any manager or supervisor at Excel regarding the campaigning rights of IBT members. He stated that he first became aware of the campaigners' presence at Excel when a member called him at around 2:30 p.m. to complain about the materials being distributed. Hartl told the member that Excel "would have to grant both slates access if they granted any access." This concurs with Local 961 president Douglas Whetstine's understanding, at the time, of the *Rules'* access provisions. Whetstine stated that he knew that both slates must be treated equally with respect to campaigning but was unaware of the provision in Article VII, Section 11(e) that grants IBT members access to employer parking lots.¹

All three campaigners allege that Hartl and a plant steward watched the campaigners from Hartl's truck for about an hour before getting out to talk with the campaigners. The campaigners have not asserted that Hartl or his alleged surveillance hindered their campaigning. When Hartl left his truck, he spoke with Morales. Hartl asserts that he wished Morales success in getting members involved in the election. Morales said that Hartl asked him what he was doing and said that he could not campaign there. Brailey did not hear Hartl speak with Morales but said that Hartl claimed he was telling Morales that campaigning was a good thing and that he hoped that it would increase member participation in the local union. Brailey admits that in response, he told Hartl that members might be more involved if they were better represented. Hartl, according to Brailey, got upset by the remark and told Brailey that he did not know what was going on at the plant. Hartl then went inside the plant and was not seen again.

After speaking with the campaigners, Hartl entered the plant and asserts that he did not hear about the campaigners until about 4:00 p.m. when Whetstine informed him that the campaigners had been removed from the property. Later that day, at around 6:00

¹ No one from Local 961 contacted our office to determine the campaigners' rights.

p.m., Hartl states that the fabrication superintendent Tom Allen told him that he had made the decision to have the campaigners removed.

Analysis

Although we do not condone the improper actions taken against the campaigners initially, it appears that the effect of Friday's events was not long lasting. Excel quickly changed its position upon receiving copies of our advisory and the federal court order enforcing the access provision. The campaigners returned on the Saturday and Monday following Friday's events and were permitted to campaign in Excel's parking lot; even though some members asked the campaigners about the Friday incident, they took the campaign materials. In addition, Morales stated that when the campaigners were forced off Excel's property on Friday, the shift had ended and further campaigning would not have been effective. Finally, there have been no assertions or implications that Local 961 has hindered campaigning since Excel allowed the campaigners to return to the property.

In addition, we have received no evidence that IBT members employed at Excel's Fort Morgan plant were affected so as to render campaigning ineffective for more than a couple of hours. Based on the campaigning that has occurred after the incident, we are confident that Excel and Local 961 now know about and will comply with the limited access rights of Article VII, Section 11(e). Thus, we are satisfied that IBT members wishing to exercise these rights at the Fort Morgan plant will be permitted to do so. Accordingly, as in similar cases, we deem the protest RESOLVED. *See, e.g., Soto*, 2001 EAD 466 (September 21, 2001); *Holbrook*, 2001 EAD 416 (July 31, 2001).

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 upon evidence that was not presented to the Office of the Election Administrator in any such appeal. 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, 727 15th Street NW, Tenth Floor, Washington, DC 20005 (facsimile: 202-454-1501), all within the time prescribed above. A copy of the protest must accompany the request for

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hearing.

William A. Wertheimer, Jr.

William A. Wertheimer, Jr.
Election Administrator

cc: Kenneth Conboy
2001 EAD 531

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