

IN RE

FRANK VILLA

00 – Elec. App. – 014 (KC)

This matter is an appeal from the Election Administrator’s decision, dated December 1, 2000, Office of the Election Administrator Case No. PR092901WE. The request for a hearing was filed by Jeremy C. Moritz, Esq. on behalf of Vons Companies, Inc.

A hearing was held before me on January 5, 2000. The following persons were heard by way of teleconference: Jeffrey Ellison, Esq. for the Election Administrator’s Office; Jeremy Moritz, Esq. of Franczek Sullivan P.C., on behalf of Vons Companies, Inc. and Bradley T. Raymond, Esq. of Finkel, Whitefield, Selik, Raymond, Ferrara & Feldman on behalf of the International Brotherhood of Teamsters.

Here Frank Villa the protester asserts that he was prevented from distributing campaign literature for the Leedham Slate at the Vons Companies, Inc. (“VCI”) facility in Sante Fe Springs, California. According to Mr. Villa, shortly after arriving at VCI’s parking lot facility, he was forced to leave by the company’s security guard, who told him that campaign literature could not be distributed on its premises.

VCI’s Labor Relations official told the Election Administrator that the protester had been distributing copies of the Convoy Dispatch and littered the parking area with copies of the paper. Mr. Villa admitted that he had been distributing the newspaper, but denied the charge that he had littered the parking area. VCI never produced its security guard for interview by the

Election Administrator, and accordingly, the credibility issue was decided in favor of the protester.

Under Article VII Section 11(c) of the Election Rules, the limited access for campaigning provision, the Election Administrator found a violation, and imposed a cease and desist order on VCI.

The Rules, in effect on the date of the incident, were not formally approved by the Honorable Loretta A. Preska of the United States District Court for the Southern District of New York until November 8, 2000.

On appeal, VCI argues that it had no formal notice of the protest and decision and ought not be bound by the consequences of the protested incident, and that, in any case, the Election Administrator had no jurisdiction over the matter, since the Rules were not unenforceable until the federal court approved them in November, some five weeks after the incident.

It is clear from the record that VCI had de facto notice of the protest and decision. It is also clear that the Rules were promulgated and widely enforced, with Judge Edelstein's implicit approval, prior to Judge Preska's formal approval of the Rules on November 8, 2000.

The violation as found by the Election Administrator is therefore affirmed.

In light of VCI's agreement to be bound by the Rules and specifically the employer access rule in Article VII, Section 11(e), the cease and desist sanction imposed as remedy is moot, and is therefore vacated.

\_\_\_\_s/Kenneth Conboy\_\_\_\_\_  
Kenneth Conboy  
Election Appeals Master

Dated: January 18, 2001