ELECTION APPEALS MASTER

IN RE: MAURICE COBB	01 Elec. App. 100 (KC)

This matter is an appeal from the Election Administrator's decisions 2001 EAD 509 and 2001 EAD 513 issued on October 16 and 18, 2001. The appeal hearing was requested by James J. Hicks, Esq. on behalf of the Hoffa Campaign.

A hearing was held before me on October 17, 2001. The following persons were heard by way of teleconference: Jeffrey J. Ellison, Esq., for the Election Administrator's Office; Betty Grdina, Esq. of Yablonski, Both & Edelman on behalf of the Leedham Slate; Bradley T. Raymond, Esq. of Finkel, Whitefield, Selik, Raymond, Ferrara & Feldman on behalf of the International Brotherhood of Teamsters; James J. Hicks, Esq. on behalf of the Hoffa Campaign; and Todd Thompson, Campaign Manager for the Hoffa Campaign.

Fifteen days ago, on October 4, 2001, General President Hoffa visited and campaigned at a break room in building 302 at the Altanta Airport facility of Gate Gourmet ("Gate"). The break room, according to the Election Administrator's ("EA") factual findings in his decision of October 16, 2001 ("Decision") "is accessible to the public", Decision, 1. Furthermore, the EA found that Hoffa did not enter the work area of the facility. Id.

The EA also concluded that Gate had never "notified [the Leedham Campaign] that the break room was available for campaigning by IBT candidates." Id.

Kandy Larkey, Gate's personnel manager for only the past year, not surprisingly told the EA that she was unaware of any previous campaigning in the break area, since the last and previous campaign cycles predate her assignment to her current position. Ms. Larkey told the EA that the formal policy of Gate is as follows: that had the Leedham Slate sought to campaign in the Gate break room, it would have been allowed to do so. In light of post September 11 security concerns, Ms. Larkey told the EA that requests to campaign in the break room would be routed to her manager for approval. Indeed, it was disclosed in the hearing that permission to the Leedham Slate has indeed been given, but declined on the ground that it is inconvenient to Tom Leedham, Hoffa's rival for general president.

The EA found a violation of the Rules, concluding that access to the break room constitutes an unauthorized campaign contribution and has imposed upon the Hoffa Slate the penalty of paying for a Leedham mailing to the approximately 1300 members who work at Gate. He has also imposed a $5,000 fine upon the Hoffa campaign.

The Decision made no reference to the question of whether pre-existing rights at Gate authorized campaigning in the break room under the Rules, but implied that because Ms. Larkey knew of no campaigning, the issue need not be investigated.

At the hearing on October 17, 2001 the Hoffa Slate's Campaign Manager Todd Thompson stated that Hoffa had indeed campaigned previously in the same break room, during the 1998 cycle.

The EA's spokesman, undeterred by this turn in the factual record, then stated that it made no difference, since in his view it was the Hoffa Slate's "burden" to assert prior practice "as a defense."

I directed counsel for the Hoffa Slate to provide by noon of the following day to the EA proof of the previous campaign use of the break room by Hoffa. He did so prior to noon on October 18, 2001. The EA now concedes that Hoffa did in fact campaign there in 1998. Approximately 90 minutes later, at 1:30 p.m., the Election Administration entertained a new protest, decided it and faxed it to my office (Cobb, 2001 EAD 513) ("Decision II").

In substance, Decision II is a tendentious recital of the EA's interview of David Murphy, a Senior Human Resources official at Gate. In his written statement, Mr. Murphy said Gate has at least since 1998 "tried to accommodate the Union in our facilities, provided the workforce is not disrupted . . . we will continue to do so as long as . . . [we] are provided with advance notice needed to accommodate such a request." Decision 11, 1.

There is an unmistakable tone of hostility, or at least adversity, in the account of the interview of Mr. Murphy by the EA's general counsel. Decision II, 1-2.

The EA then presents evidence from two Leedham supporters (one of whom is Cobb) who claim that almost a year ago they went to the break room on two occasions to distribute campaign literature and were refused access to the break room. It is a mark of the determined zealotry of the EA to defend his flawed decision that he does not ask himself: why didn't Cobb tell me of his November 2000 ejection from the break room in the submission of his protest of Hoffa's 2001 visit?

Try as he might to impugn the integrity of Murphy through the belated and self-interested claims (which are, as evident, accepted without any investigation whatever) of Ferrell and Cobb, the EA ignores the crucial fact: Hoffa complied with the management requirement of notice, and Ferrell and Cobb did not.

The Rules have long recognized, in the parking area cases, that reasonable notice to management is necessary.

Perhaps most disturbing in this unfortunate case, the EA sent me a letter this morning asking me to dispense with the appeals rights of interested parties under the Rules in spite of his issuance of an entirely new protest decision. There ensued, as expected, a flood of letters from lawyers for the parties. The perils of rushing to judgment and half-baked investigative conclusions are underscored by the effective attack on the Ferrell/Cobb claims in the letter of Bradley Raymond dated October 19, 2001.

I reject the finding of the EA that a pre-existing right did not exist at the time of the Hoffa Campaigning in Gate's break room on October 4, 2001. I further reject the finding of the EA that that right has been enforced on a discriminatory bases. Finally, I reject the finding of the EA that the newly made claims of Ferrell and Cobb are credible and established.

> The binding precedent of Mee, P-951 (October 2, 1996) states that Article VIII, Section II (d) "does not require that candidates be notified that facilities or resources are available for campaigning", at 3.

I specifically find that notice by employers to candidates of access rights to employer facilities is not required under the Rules. Furthermore, to state a viable protest, the candidate or campaigner must affirmatively establish that he specifically requested, on reasonable notice, access and was denied access.

Accordingly, the decision in 2001 EAD 509 is reversed and the imposed remedy is vacated, and the decision in 2001 EAD 513 is reversed on both timeliness and substantive grounds.

__s/Kenneth Conboy_____
Kenneth Conboy
Election Appeals Master

Dated: October 19, 2001