



OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
25 Louisiana Avenue, NW
Washington, DC 20001
(202) 624-8778
1 800 828 6496
Fax (202) 624-8792

Michael H Holland
Election Officer

Chicago Office
% Cornfield and Feldman
343 South Dearborn Street
Chicago, IL 60604
(312) 922 2800

March 28, 1991

VIA UPS OVERNIGHT

John King
1728 Campbell
Detroit, MI 48209

Lawrence Brennan
President
IBT Local Union 337
2801 Trumbull Ave
Detroit, MI 48216

Spartan Foods
Director of Security
9075 Haggerty Rd
Plymouth, MI 48170

Re: Election Office Case No. P-335-LU337-MGN

Gentlemen

A pre-election protest was filed pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") The protestor, John King, alleges that he was denied access to the facilities of Spartan Foods in Plymouth, Michigan for the purpose of engaging in campaign activities¹

The protestor, John King, is a member of Local Union 337 but is not employed by Spartan Foods He attempted to engage in campaign activities on the premises of the Plymouth, Michigan Spartan Foods warehouse but was denied access to the private property of Spartan by Spartan security personnel

Article VIII, § 10 (d) of the *Rules* provides that IBT members have a pre-existing right to engage in campaign activities on employer premises As noted in the Advisory Regarding Political Rights, those pre-existing rights are, at a minimum, those permitted and provided by substantive law The right to engage in intra-Union campaign activities is a right protected by substantive law District Lodge 91 International Association of

¹The election for IBT International Union delegates and alternate delegates from Local 337 has been completed and this protest is not alleged to have affected, nor did it affect, the results of such election However, the matter is not moot since the campaign and election for IBT International Union officers is still ongoing

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Machinists v. NLRB, 814 F 2d 876 (2nd Cir., 1987), NLRB v. Methodist Hospital Gary, Inc., 732 F 2d 43 (7th Cir , 1984)

IBT members employed by a different employer, such as Mr King here, also have certain rights, albeit limited, to engage in campaign activity at the premises. Since the right to engage in campaign activity is protected by substance of federal law, as well as the *Rules*, employers' right to private property must accommodate the right to engage in campaign activity. Jean Country, 291 NLRB No 4 (1988). Campaign rights of members, not employed by the employer, include the right to reasonable access to the "targets" of the activities, i e , fellow IBT members. National Maritime Union v. NLRB, 867 F 2d 767 (2nd Cir 1989). Thus, where the location of the employer's facility prevents face to face contact with the IBT members who work there, private property rights must yield to right of access. In such situations, IBT members can campaign in non-work areas of the facility, such as parking lots or outside the main entrances to the facility. Lechmere v. NLRB, 914 F 2d 313 (1st Cir , 1990)

The Plymouth, Michigan Spartan Foods warehouse is located adjacent to a heavily travelled public thoroughfare. There is an access road from that thoroughfare to the employee parking lot, security personnel are stationed at the entrance to such access road. There is no public property such as a public sidewalk between the main thoroughfare and the security locations on the access road. Thus, other than by standing in the heavily trafficked public thoroughfare, or perhaps along the curb of such thoroughfare, no location exists outside of Spartan's property for IBT members not employed by Spartan to engage in campaign activities directed at IBT members who are Spartan's employees. Although Spartan's employee parking lot is secured, Spartan has offered no specific security or safety reasons for denying campaigning access to such parking lot.

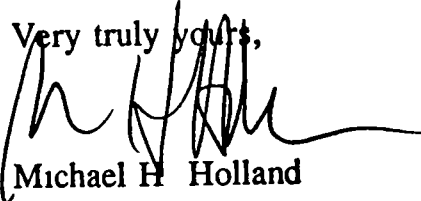
By reason of the foregoing, Spartan has violated the *Rules* by denying IBT members not employed by it any access to its private property for the purpose of engaging in campaign activities. The protest is GRANTED.

To remedy this violation, the Election Officer directs that Spartan permit IBT members not employed by it to have access to the employee parking lot located at the Plymouth, Michigan Spartan Foods warehouse for the purpose of engaging in campaign activities, that is, talking to fellow members, handing out literature, passing petitions, and the like. Spartan may require such IBT members to "check in" at the security station prior to entry into the employee parking lot.

If any interested party is not satisfied with this determination, they may request a hearing before the Independent Administrator within twenty-four (24) hours of their 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 Independent Administrator Frederick B. Lacey at LeBoeuf, Lamb, Leiby & MacRae, One Gateway Center, Newark, New Jersey 07102-5311, Facsimile (201)

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622-6693 Copies of the request for hearing must be served on the parties listed above, as well as upon the Election Officer, IBT, 25 Louisiana Avenue, N W , Washington, D C 20001, Facsimile (202) 624-8792 A copy of the protest must accompany the request for a hearing

Very truly yours,

Michael H Holland

MHH/mca

cc Frederick B Lacey, Independent Administrator
James De Haan, Regional Coordinator

Elizabeth McIntyre
Miller, Johnson, Snell & Cumiskey
800 Calder Plaza Building
Grand Rapids, MI 49503

IN RE: : 91 - Elec. App. - 122 (SA)
: :
JOHN KING, : :
: : : DECISION OF THE
and : : INDEPENDENT
: : ADMINISTRATOR
SPARTAN STORES, INC., : :
: :
and : :
: :
IBT LOCAL UNION 337 : :
:

This matter arises out of an appeal from a March 28, 1991, decision of the Election Officer in Case No. P-335-LU337-MGN. A hearing was held before me by way of telephone conference on April 4, 1991, at which the following persons were heard: Barry Smith, an attorney on behalf of Spartan Stores, Inc. ("Spartan Stores"); the complainant, John King; George Geller, an attorney on behalf of Local 337; John J. Sullivan and Jacob Pomeranz, on behalf of the Election Officer; and James DeHaan, the Regional Coordinator.

The issues raised in this appeal are not new and have been addressed in prior decisions by the Independent Administrator. At issue is Spartan Stores' refusal to allow Mr. King to engage in campaign activity in its employee parking lot at its facility on Haggerty Road in Plymouth, Michigan. Although Mr. King is an

employee of Spartan Stores, he is not employed at the Haggerty Road facility.

First, Spartan Stores challenges the jurisdiction of the Independent Administrator contending that it is a non-party to the Consent Order. In addition, the Local argues that the Independent Administrator is precluded from applying federal labor law, by virtue of the exclusive jurisdiction of the National Labor Relations Board ("NLRB").

As noted, the Independent Administrator has already had occasion to address the issue of jurisdiction over employers of IBT members as well as the argument concerning the exclusive jurisdiction of the NLRB. In In Re: McGinnis, 91 - Elec. App. - 43 (January 23, 1991), the Independent Administrator found that he did, in fact, have jurisdiction over employers and that he was not precluded from applying federal labor law. United States District Court Judge David N. Edelstein denied a request by the employer in McGinnis, Yellow Freight Systems, Inc., to enjoin enforcement of the Independent Administrator's order. (Bench Opinion issued on March 4, 1991).

Concerning the merits of this appeal, this matter implicates Article VIII, Section 10.d. of the Rules For The IBT International Union Delegate And Officer Election (the "Election Rules"). Article VIII, Section 10.d. provides that no restrictions shall be placed on members' pre-existing rights to solicit support, distribute literature, or otherwise engage in campaign activities on an employer's premises. The extent of non-employee's right to

campaign on employer premises was discussed in detail in McGinnis. In McGinnis, Yellow Freight Systems, Inc. was refusing access to non-employees at two of its plants. As stated in McGinnis:

In the present case, the Election Officer properly determined that the appropriate analysis for resolving the conflict between the complainants' right to campaign against incumbents and Yellow Freight's property interests is a balancing test in which the strength of the IBT member's right to engage in campaign activity, the strength of the employer's property right and the availability of a reasonable alternative means of communication are weighed against one another. See Jean Country, 291 NLRB No. 4 (1988). I agree that this balancing test is the proper analysis to apply to the present protests and any other similar conflicts that may arise between campaigning union members and employers.

Mr. King is a member of Local 337 and a candidate for delegate to the 1991 IBT International Convention. As noted, although Mr. King is an employee of Spartan Stores, he is not employed in the Haggerty Road facility. Spartan Stores' security personnel have denied Mr. King access to the Haggerty Road facility's parking lot. As explained in the Election Officer's Summary:

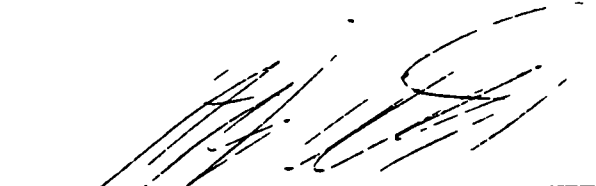
There is no public property such as a public sidewalk on which IBT members such as Mr. King can safely make contact with fellow IBT members. Instead, the only alternative to access to Spartan's access road or parking lot is braving the traffic to stand on Haggerty Road or along the curb.

Spartan offers no reasons of safety or security to justify its denial of access to the parking lot to IBT members wishing to campaign among Spartan employees.

Given that there is no safe alternative to reasonable access to the Haggerty facility's employee parking lot, Spartan's refusal to allow Mr. King access to that parking lot is in violation of the Election Rules. Although Spartan suggests that the Election Rules provide Mr. King with alternative means of communicating with

members of the Local (such as campaign mailings), Spartan Store's refusal in this case prevents Mr. King from the all-important face-to-face contact. Accordingly, Spartan Stores' interest in protecting its parking lot must yield to Mr. King's limited right of access to IBT members who are employed at the Haggerty Road facility.

Accordingly, the Election Officer's decision in this matter is affirmed in all respects.



Independent Administrator
Frederick B. Lacey
By: Stuart Alderoty, Designee

Dated: April 9, 1991