



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

February 25, 1991

VIA UPS OVERNIGHT

Bill St Clair
2208 Waterloo Road
Stockton, CA 95205

Pat Miraglio
Secretary-Treasurer
IBT Local Union 439
1531 E Fremont Street
Stockton, CA 95201

Connie Neese
Leprino Foods
2401 MacArthur
Tracy, CA 95376

Re: Election Office Case No. P-516-LU439-CCV

Gentlemen

A pre-election protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules") The complainant, Bill St Clair, filed this protest over an employer's (Leprino Foods) refusal to allow him to pass out campaign literature inside the employee parking lot at the employer's plant The Election Officer conducted an investigation and the investigation reveals the following

The plant site at issue is located at 2401 MacArthur Drive, Tracy, California The employee parking lot is physically enclosed by a cyclone fence The cyclone fence is posted prohibiting public access There is no evidence that the public is generally allowed access to this parking lot There are three entrances to the plant through the fence The main entrance is served by a 30 or 40 foot wide driveway Employees are allowed to park both in the company lot as well as a public parking places along the street Indeed, employees are required to park other than in the company's lot since the lot is not large enough to accommodate all employees There is a sidewalk outside the fence and between the street and the entrance to the employee parking lot which is approximately 15 feet wide

Article VII, §10(d) of the *Rules* provides that no restriction shall be placed on IBT members pre-existing rights to utilize and have access to employer premises for campaign purposes and campaign activities. An Employer's private property rights may be limited if necessary to accommodate employees rights to engage in campaign activities. Jene Country, 291 NLRB 4 1988. Thus, where location of the employer's facilities prevents face-to-face contact with IBT members who work there, private property rights must yield to a limited right of access. Lechmere vs. NLRB, 914 F2d 313 (1st Cir 1990)

These rules of accommodation apply only where it can be established that there is no existing fair opportunity for face-to-face contact with employees entering the plant except by entering upon the company's property. The investigation does not reveal this to be the case at the Leprino Food worksite. The fifteen foot wide sidewalk allows ample time and space for employees to stop and receive literature before entering the employee parking lot. Additionally, many employees do not park in the lot and would enter the plant by walking down the sidewalk where they could be approached by a person seeking to distribute literature. Accordingly, this protest is DENIED.

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) 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
Donald E. Twohey, Regional Coordinator

IN RE:

BILL ST. CLAIR,

Complainant,

and

LEPRINO FOODS,

and

IBT LOCAL UNION NO. 439,

Respondents.

91 - Elec. App. - 88 (SA)

DECISION OF THE
INDEPENDENT
ADMINISTRATOR

This matter arises out of an appeal from a February 25, 1991, ruling by the Election Officer in Case No. ~~91-439-CCV~~. A hearing was held before me by way of teleconference on March 5, 1991, at which the following persons were heard: Bonnie Gibson, an attorney on behalf of Leprino Foods; Connie Neese, a representative from Leprino Foods; the complainant, Bill St. Clair; Donald Twohey, the Regional Coordinator; and John Sullivan, on behalf of the Election Officer. In addition, a written submission was received from Pat Miraglio, Secretary-Treasurer of Local 439.

Mr. St. Clair filed his protest challenging Leprino Foods' refusal to allow him to pass out campaign literature inside the employee parking lot at its facility. Mr. St. Clair is a member of Local 439, but not an employee of Leprino Foods. Mr. St. Clair is also a candidate for delegate to the 1991 IBT International Convention on behalf of Local 439.

The employee parking lot at issue is physically enclosed by a cyclone fence. The cyclone fence is posted with signs prohibiting public access. There is no evidence that the public is generally allowed access to this parking lot, although visitors are allowed access to visit Leprino's offices and Personnel Department. In fact, Leprino Foods has a firm "no solicitation/no distribution" policy that has consistently been enforced in the past.

There are three entrances to the plant through the fence. The main entrance is served by a 30-40 foot wide driveway. Abutting the driveway is a large sidewalk approximately 15 feet wide. The sidewalk extends along the fence but tapers down in width to approximately 3-4 feet, the normal width of a sidewalk.

Employees are allowed to park both in the employee lot as well as the public parking places along the street. Indeed, many employees are forced to park on the street since the employee parking lot is not large enough to accommodate all employees.

Article VII, Section 10.d. of the Rules For The IBT International Union Delegate And Office Election (the "Election Rules") provides that no restriction shall be placed on IBT members' pre-existing rights to utilize and have access to employer premises for campaign purposes and campaign activities. The extent of a non-employee's right to campaign on employer premises was discussed in detail in In Re: McGinnis, et al., 91 - Elec. App. - 43 (January 23, 1991). In McGinnis, the employer, 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.

In applying this balancing test to the competing interest of Mr. St. Clair's right of access to Leprino Foods' property for campaign purposes and Leprino Foods' property interest in its facility, the Election Officer found that Leprino Foods' prohibition on solicitation by non-employees did not violate Mr. St. Clair's rights under the Election Rules. As stated by the Election Officer in his Summary:

[T]he location of the plant in this case does not prevent direct contact between campaigning IBT members and members who are Leprino employees. To the contrary, access is afforded by the driveway at the main entrance and by the wide sidewalk. All members employed by Leprino enter the facility via the 30 to 40 foot wide driveway; a fifteen foot sidewalk lies perpendicular to the driveway. IBT members can contact their fellow members employed at Leprino by standing on public property, i.e. on the driveway prior to the point it reaches the fence and/or on the sidewalk adjacent to such driveway. Because the access thus afforded by public property is sufficient, there is no need to require encroachment onto the private property of the employer.

In short, although Mr. St. Clair may have a greater access to Leprino Foods' employees if permitted to roam freely in its employee parking lot, he has a reasonable alternative means of communicating with his fellow IBT members on the public sidewalk adjacent to the entrance to the fenced employee parking lot. When

measured against the strong property interest Leprino Foods has demonstrated in protecting its employee parking lot, it is clear that the Election Officer's denial of Mr. St. Clair's protest is correct and thus should be, and is, affirmed in all respects.



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

Dated: March 7, 1991