

OFFICE OF THE ELECTION OFFICER  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
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Washington, DC 20001

Michael H. Holland  
Election Officer

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March 15, 1991

Via UPS Next Day Air and Fax as indicated

James A. Benson  
2425 W. Banff Ln.  
Phoenix, AZ 85023

Virgil D. Hunt  
8821 W. Roanoke Ave.  
Phoenix, AZ 85037

Fleming Foods  
624 S. 25th Ave  
Phoenix, AZ 85009  
Attn. Frank Woods  
Jim Gramatico  
Bill Smith  
(602) 269-5363

W. Terry Moser  
Secretary-Treasurer  
IBT Local Union 104  
1450 S 27th Ave  
Phoenix, AZ 85009  
(602) 272-3744

Re: Election Office Case Nos. P-645-LU104-RMT  
and P-647-LU104-RMT

Gentlemen:

Two pre-election protests have been filed pursuant to the Rules for the IBT International Union Delegate and Officer Election, revised August 1, 1990 ("Election Rules"). In the first protest, P-645-LU104-RMT, James A. Benson alleges that his rights were violated by his employer, Fleming Foods, when he was informed that he could not distribute campaign material in nonwork areas during non work times and that the only place he could distribute campaign material was off Fleming Foods' property. The second protest, P-647-LU104-RMT, filed by Virgil D. Hunt, states essentially the same claim. These protests were consolidated by the Election Officer for decision. The Election Officer's investigation revealed the following.

James A. Benson is a member of Local Union 104 and an employee of Fleming Foods. Virgil D. Hunt is a member and Vice President of Local Union 104 and is also an employee of Fleming Foods. Both Benson and Hunt are candidates for delegate to the 1991 IBT International convention. They are on opposing slates.

Mr. Benson has actively campaigned among IBT members employed by Fleming on behalf of his slate of delegates. On February 2, 1991, Mr. Benson was informed by Fleming Foods' management that he could not post his campaign literature on general purpose bulletin boards. Mr. Benson filed a protest with the Election Office, P-431-LU104-RMT, challenging the employer's restriction on his campaign activity. On February 8, 1991 he was informed by Fleming Foods that he could post his material on general purpose bulletin boards. However, on February 12, 1991, Benson was instructed by

management to remove his literature.

On February 19, 1991, the Election Officer issued his decision in Case No P-431-LU104-RMT, finding that the employer had violated the Election Rules. In that determination the Election Officer held that Fleming Foods' employees had a right to post campaign material on general purpose bulletin boards and to hand out such literature in nonwork areas during non work times. The Election Officer ordered Fleming Foods to cease and desist from interfering with these rights and to post a notice informing IBT members of their rights. The Election Officer informed Fleming Foods of its right of appeal to the Independent Administrator and directed it to comply with his Order by March 1, 1991.

Fleming Foods did not appeal the Election Officer's determination. On or about March 4, 1990, a representative of the Election Officer contacted Fleming Foods' Regional Director of Human Resources regarding compliance with the Election Officer's order. The Election Officer was informed that while it is the employer's policy to permit employees to engage in campaign activity in nonwork areas during non work time, Fleming Foods would not permit the posting of campaign literature on general purpose bulletin boards. Fleming Foods also stated that it would not comply with the Election Officer's order requiring a posting. The Election Officer has requested the United States Attorney for the Southern District of New York to institute contempt proceedings against Fleming Foods in accordance with the Court's July 10, 1990 decision in United States v. I.B T., et al.

Virgil H. Hunt has also been active in campaigning on behalf of his slate of delegates to the IBT International convention. On March 7, 1991, Hunt was informed by Frank Woods, the Fleming Foods Head Maintenance Supervisor, that he would not be able to pass out literature on Fleming Foods property at any time. When Hunt complained that Benson was passing out literature Woods stated that Benson would also be prohibited from distributing literature on Fleming Foods' property.

On March 8, 1991, Jim Gramatico, a Fleming Foods supervisor, informed Benson that he was prohibited from passing out literature anywhere on Fleming Foods' property. Benson complained that he had previously passed out literature in nonwork areas during nonwork time. Gramatico replied that Bill Smith, the manager of the Phoenix facility, told him that such distribution was against company policy.

Article VIII, Section 10(d) of the Election Rules provides that no restrictions shall be placed on the pre-existing rights of IBT members to distribute literature on employer premises. IBT members have a pre-existing right to hand out literature in nonwork areas during nonwork time. NLRB v. Magnavox, 415 U.S. 322 (1974); Eastex, Inc. v NLRB, 437 U.S. 556 (1978); District Lodge 91, International Association of Machinists v NLRB, 814 F. 2d 876 (2nd Cir 1987); NLRB v Methodist Hospital of Gary, Inc., 732 F. 2d 43

(7th Cir. 1984).

To remedy this violation of the Election Rules the Election Officer hereby orders the following relief:

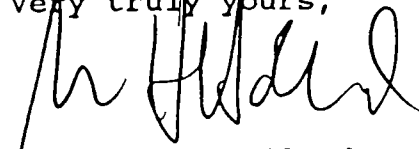
1. Fleming Foods, its officers, agents and employees, shall cease and desist from interfering with the right of IBT members to engage in campaign activities, including the distribution of campaign literature, in nonwork areas during nonwork times.

2. James A. Benson and Virgil D. Hunt, and the slates of candidates with which they are affiliated, shall each be afforded a campaign mailing to all Local Union 104 members employed by Fleming Foods. The literature shall be a single 8.5" by 11" tri-fold with printing on both sides of the page. A camera ready copy of the literature shall be delivered to Regional Coordinator Bruce Boyens. The literature will be mailed within 72 hours of its delivery to the Regional Coordinator. Fleming Foods is directed to reimburse the Election Office for all printing and mailing costs associated with the mailing.

3. Any appeal of this Determination shall not stay this Order. See Article XI, Section (a)(8) of the Election Rules.

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  
Election Officer

cc Frederick B. Lacey, Independent Administrator, IBT  
Bruce Boyens, Regional Coordinator  
Edward T. Ferguson, Assistant United States Attorney for the  
Southern District of New York