

OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
25 Louisiana Avenue, NW
Washington, DC 20001

Michael H. Holland
Election Officer

(202) 624-8778
1-800 828-6496
Fax (202) 624 8792

April 4, 1991

VIA UPS OVERNIGHT

Lonnie Bedell
14 Nelkin Drive, Apt 131
Wallington, NJ 07057

George J. Lonergan
Secretary-Treasurer
IBT Local Union 641
714 Rahway
Union, NJ 07083

Re: Election Office Case No. P-659-LU641-NJE

Gentlemen

A pre-election protest was timely filed pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") In his protest, Lonnie Bedell, a candidate for delegate, alleges that he has been improperly denied campaign access to Yellow Freight facilities located in South Plainfield and Elizabeth, New Jersey in violation of the *Rules*

The protest was investigated by Regional Coordinator Edward Ellis. The investigation discloses the following facts: Lonnie Bedell is a former employee of the Elizabeth terminal of Yellow Freight. He was discharged from his employment on February 3, 1988. On May 18, 1989, the National Labor Relations Board (NLRB) found that Yellow Freight had discriminatorily discharged him in violation of the National Labor Relations Act (NLRA). The NLRB ordered Yellow Freight to reinstate Bedell with back pay. This order of the NLRB was appealed by Yellow Freight, and the case is currently pending on appeal before the United States Court of Appeals for the Third Circuit.

Bedell argues to the Election Officer that his access rights to Yellow Freight should be the same rights afforded IBT members who are employed by Yellow Freight because the NLRB has ordered his reinstatement as a Yellow Freight employee. The NLRB decision is not a final decision. Yellow Freight is entitled to appeal, and has appealed, that decision to the Court of Appeals. The NLRB has elected not to pursue interim relief for Bedell under § 10(j) of the NLRA. Thus, until a final decision is

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rendered, Bedell is not entitled to reinstatement and cannot be considered a Yellow Freight employee

Bedell, as an IBT member, does have certain limited campaign access rights, however, even if not employed by Yellow Freight. If the Yellow Freight facilities where Bedell seeks to campaign are so situated that he cannot engage in face to face contact with the IBT members who work at such facilities, then he would be permitted to campaign in non-work areas outside of the terminal in locations generally open to the public such as the parking lot or outside the entrances or entrance gates to the facility. Further, if Yellow Freight has a past practice of allowing greater access than that, such a prior practice would prevail. There is no allegation of such a practice in this case.

Adjunct Regional Coordinator Jim Burke visited the Yellow Freight facilities at Elizabeth, South Plainfield, East Brunswick, Newark, Pluebrook, and Carlstadt. Each of these facilities abut public sidewalks where Bedell could campaign or hand out literature without risking injury from passing traffic.

At the Elizabeth terminal, the IBT members park their personal vehicles in an employee parking lot that is across Third Avenue from the entry to the terminal. Yellow Freight refused to permit Bedell to place leaflets on the cars of employees in the parking lot. IBT members not employed by Yellow Freight, including Bedell, could, however, safely leaflet Yellow Freight employees who are IBT members on the sidewalk outside the terminal or at the entry to the parking lot across the street from the terminal facilities.

The Carlstadt terminal is located on Dell Road in the middle of an industrial park. There is a sidewalk located at the point where the Yellow Freight driveway intersects with Dell Road at the edge of the Yellow Freight property. IBT members not employed by Yellow Freight, including Bedell, could campaign on the sidewalk at this intersection.

Based on the foregoing, the Election Officer concludes that the location of public sidewalks permits IBT members not employed by Yellow Freight to access IBT members employed by Yellow Freight outside the Yellow Freight premises. Since such public access is available, it is not necessary for Bedell or other IBT members to enter onto Yellow Freight's private property in order to have face to face contact for campaign purposes with their fellow members employed by Yellow Freight.

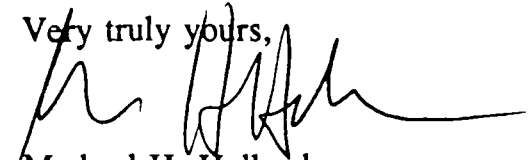
The *Rules* have not been violated, and the protest is DENIED.

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)

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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
Edward T Ellis, Regional Coordinator

IN RE:	:	91 - Elec. App. - 126 (SA)
	:	
LONNIE BEDELL,	:	
and	:	
YELLOW FREIGHT SYSTEMS, INC.	:	DECISION OF THE
	:	INDEPENDENT
and	:	ADMINISTRATOR
	:	
IBT LOCAL UNION NO. 641	:	

This matter arises out of a appeal from an April 4, 1991, decision of the Election Officer in Case No. [REDACTED]. A hearing was held before me on April 11, 1991. At that hearing, the complainant, Lonnie Bedell, appeared in person as did another member of Local 641, Robert Mennicucci. In addition, John J. Sullivan on behalf of the Election Officer; and the Regional Coordinator, Edward Ellis were heard by way of telephone conference. No one on behalf of Yellow Freight or the Local appeared.

This is another campaign access case. 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 a non-employee's right to campaign on employer premises was discussed in detail in In Re: McGinnis, 91 - Elec. App. - 43 (January 23, 1991), aff'd, United States v. IBT, slip op., (S.D.N.Y. April 3, 1991). 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. Bedell is a member of Local 641 and a candidate for delegate to the 1991 IBT International Convention. Mr. Bedell was employed by Yellow Freight at its Elizabeth, New Jersey facility until his discharge on February 3, 1988. Mr. Bedell challenged his discharge before the National Labor Relations Board ("NLRB"). The NLRB found in Mr. Bedell's favor. Yellow Freight has sought review of the NLRB's decision. The appeal is currently pending in the United States Court of Appeals for the Third Circuit. Because the NLRB elected not to pursue interim relief for Mr. Bedell, he has not been reinstated pending a final decision in this matter. Thus, it is not disputed that until the relief ordered by the NLRB is enforced, Mr. Bedell will not be treated by Yellow Freight as an employee. Accordingly, for purposes of this appeal, Mr. Bedell

will not be viewed as an employee of Yellow Freight at any of its facilities.

Mr. Bedell complained that Yellow Freight System, Inc.'s refusal to allow him to engage in campaign activity, such as leafleting in the employee parking lots at five of its New Jersey facilities, violates the Election Rules. Representatives of the Election Officer personally investigated the five facilities in question and determined that Mr. Bedell had a reasonable alternative means of access to members employed at those facilities and, thus, Yellow Freight was not obligated to permit Mr. Bedell access to its parking lots. Mr. Bedell concedes the point on three of the five facilities. The two facilities that remain at issue are the Elizabeth and Carlstadt facilities.

At the hearing, Mr. Bedell produced photographs of the Elizabeth facility. The Elizabeth facility is surrounded by a fence. To enter the facility one must pass through a guard gate. There is a large concrete driveway leading up to the guard gate. There is a public sidewalk on one side of the driveway along the fence. The sidewalk is abutting the street. On the other side of the driveway also along the fence and abutting the street, there is a setback of approximately ten feet covered with grass. Mr. Bedell claims that it would be unsafe for him to try to attempt to stop vehicles exiting and entering through the driveway while standing either on the public sidewalk or the grassy setback. In addition, Mr. Bedell complained that truck drivers would not be inclined to stop to receive leaflets from Mr. Bedell.

This is precisely the situation presented to the Independent Administrator in the matters In Re: St. Clair, 91 - Elec. App. - 88 (SA) (March 7, 1991); and In Re: Hernandez, 91 - Elec. App. - 112 (SA) (April 1, 1991).

In affirming the Election Officer's ruling in St. Clair, the Independent Administrator stated:

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.

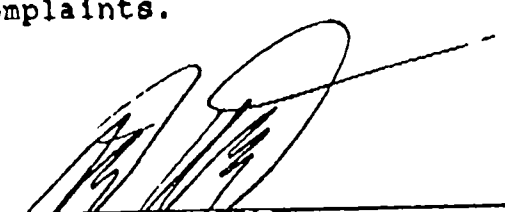
In this case, Yellow Freight has also demonstrated a strong property interest in its Elizabeth facility. As noted, the facility is surrounded by a fence and is protected by a guard gate. In addition, there is no evidence of a past practice of allowing non-employees access to the parking lot for campaign purposes.

As for the Carlstadt facility, Mr. Bedell did not produce any photographs or any other evidence that would suggest that the Election Officer's conclusion regarding the Carlstadt facility is wrong.

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

As an aside, at the hearing before me, both Mr. Bedell and Mr. Mennicucci complained of alleged intimidation at their Local. They suggested that the Election Officer and, on other matters, the

Investigations Officer, were not pursuing their complaints in a satisfactory manner. I am confident that the Election Officer treats any charge of intimidation or wrongdoing in the election process as a serious one. The Election Officer conducts investigations to determine if such allegations have merit. If appropriate, a remedy is ordered. That Mr. Bedell, a candidate challenging the incumbents, was able to prevail in his bid for a delegate position is proof that the Election Officer has paved the way for such opposition. In addition, I am satisfied that the Investigations Officer treats every complaint of corruption at any level of the IBT as a serious one and also takes the necessary and appropriate action to address such complaints.



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

Dated: April 15, 1991