

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 19, 1991

VIA UPS OVERNIGHT

Douglas Frechin
7515 181st Place, SW
Edwards, WA 98020

Allen McNaughton
Secretary-Treasurer
IBT Local 174
553 John St
Seattle, WA 98109

Yellow Freight
2150 48th Ave, Court E
Tacoma, WA 98424

Re: Election Office Case No. P-692-LU174-PNW

Gentlemen

A protest has been 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, Douglas Frechin, an elected delegate¹ to the 1991 IBT Convention alleges that he has been denied campaign access to the Yellow Freight terminal located in Tacoma, Washington. Frechin is employed by Yellow Freight but not at the Tacoma facility.

The protest was investigated by Adjunct Coordinator Patricia Warren. The investigation discloses the following facts: On March 4, 1991 Frechin and a fellow IBT member, Rich Kraft, went to the Tacoma Yellow Freight facility to distribute literature. Some of the literature was campaign-related, some was not. Upon arriving at the facility, they spoke with Paul Marshall, the manager of the facility, to request access to the break room to distribute his material. Frechin alleges that Marshall informed both

¹Although Frechin is a successful candidate in the delegate election, the protest is not moot because the campaigning for the election of International Officers will continue through 1991.

Douglas Frechin
April 19, 1991
Page 2

men that he agreed that they could distribute some of the material, but not all. He told them additionally that he wanted to confer with the Shop Steward as a courtesy before the two men entered the facility, and he stated that in the future they should call ahead before coming to the facility to campaign. Frechin and Kraft left, but went down the road to a traffic light and distributed literature. Marshall denies that he told Frechin and Kraft that they could have access to the break room. He states that he wanted to check with the Labor Relations Department of Yellow Freight before deciding the issue of access.

On March 11, 1991, Frechin returned to the Tacoma facility and was informed by both the Shop Steward and Marshall that he would not be permitted to campaign at the facility because of Yellow Freight's distribution and solicitation policy. The written policy was provided to Frechin and provides in relevant part "There shall be no distribution of literature or solicitation by non-employees in working or non-working areas during working or non-working time. In other words, non-employees are not allowed on company property for the purpose of distributing literature or soliciting."

Yellow Freight's solicitation distribution policy has been the subject of prior decisions in Case Nos. P-021-LU710-CHI, P-023-LU710-CHI, and P-165-LU299-MGN. The Election Officer decided in those cases that IBT members not employed at the particular Yellow facility do in fact have certain rights of access to Yellow Freight's property, depending on the configuration of such property. The Election Officer's decisions have been affirmed by the Independent Administrator in 91-Elec App -43 and the U.S. District Court United States of America v International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO et al 88 Civ 4486 (USDC, Southern District of New York).

In this case, the investigation shows that the Tacoma property is shared by Yellow Freight and by Roadway. The entire piece of property is fenced in, but the gate is left open and there is no guard at the gate. The perimeter of the parking area is not fenced separately nor is there a fence separating Yellow Freight and Roadway. Visitors as well as employees park in the common lot.

IBT members access the parking lot via a public road that dead ends at the Yellow Freight property. There are no sidewalks or grassy areas bordering the entrance to the parking lot where IBT members not employed at this Yellow facility could campaign, and have face-to-face contact, with members employed by Yellow Freight at the Tacoma, Washington facility.

There is no evidence that Yellow Freight has permitted anyone other than its employees interior access for campaign purposes in the past. Therefore, the Election Officer will not require such access in this case. The Election Officer does conclude, however, that IBT members not employed by Yellow are entitled to access to Yellow Freight's property since there is no opportunity to safely engage in campaigning among members employed at the Tacoma, Washington facility without such access.

Douglas Frechin
April 19, 1991
Page 3

The Election Officer determines that such IBT members not employed by Yellow are entitled to engage in campaign activities in the "L" shaped area designated as the employee and visitor parking lot area of the facility. While the lot is not separately fenced, it is separated from the work area by a sizeable space. Further, campaigning in the parking "L" shaped area permits access Yellow Freight IBT members employed by Yellow Freight without creating safety problems or disrupting work.

In accordance with the foregoing, the protest is UPHeld. Yellow Freight is directed to permit all IBT members, including those not employed by it to have access to the visitor/employee parking lot at the Tacoma, Washington facility as described above. An affidavit shall be filed by Yellow Freight no later than May 1, 1991, indicating compliance with this order.

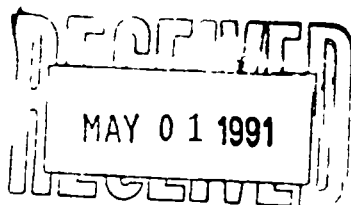
If any interested party is not satisfied with this determination, they may request a hearing before the Independent Administrator within twenty-four (24) hours of their receipt of this letter. The parties are reminded that, absent extraordinary circumstances, no party may rely upon evidence that was 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/pjm

cc Frederick B. Lacey, Independent Administrator
Christine M. Mrak, Regional Coordinator



IN RE:	:	91 - Elec. App. - 141 (SA)
DOUGLAS FRECHIN	:	DECISION OF THE
and	:	INDEPENDENT
YELLOW FREIGHT SYSTEMS, INC.	:	ADMINISTRATOR
and	:	
IBT LOCAL UNION NO. 174	:	

This matter arises out of an appeal from a Decision of the Election Officer in Case No. P-692-LU174-PNW. A hearing was held before me by way of telephone conference on April 29, 1991, at which the following persons were heard: the complainant, Douglas Frechin; Richard Kraft, on behalf of Mr. Frechin; Ronald E. Sandhaus, an attorney on behalf of Yellow Freight Systems, Inc. ("Yellow Freight"); Jim Oswald, an attorney on behalf of Local 174; Christine Mrak, the Regional Coordinator; Patty Warren, the Adjunct Regional Coordinator; and John J. Sullivan, on behalf of the Election Officer.

This is another access case; in other words, it involves the rights of Union members to access employer worksites for purposes of campaigning.

Mr. Frechin is a member of Local 174. He is also an elected delegate to the 1991 IBT Convention on behalf of that Local. Mr. Frechin is employed by Yellow Freight at its facility in Everett, Washington. This protest centers on Mr. Frechin's efforts to gain access inside a Yellow Freight facility located at Tacoma, Washington.

In the first instance, it is now settled that the Election Officer and the Independent Administrator have jurisdiction over employers such as Yellow Freight. See In Re: McGinnis, 91 - Elec. App. - 43 (January 23, 1991), aff'd, United States v. IBT, 88 Civ 4486 (S.D.N.Y. April 3, 1991).

To be considered next, Article VIII, Section 10.d of the Rules For The IBT International Union Delegate And Officer Election (the "Election Rules") provides that no restriction shall be placed on candidates' pre-existing rights to campaign on employer premises. As stated by the Election Officer in his Summary:

Pre-existing rights can be established by federal substantive law or by the past practice of a particular employer. Federal substantive labor law recognizes a limited right of access for non-employees who wish to campaign among the union members they are seeking to represent. For that reason, the employer's rights of private property must accommodate to some extent the members' right to engage in campaign activities. E.g., Jean County, 291 NLRB No 4 (1988). Union members are thus afforded the right to reasonable access to their fellow union members working for another employer. National Maritime Union v. NLRB, 867 F.2d 767 (2d Cir. 1989).

In an Advisory Regarding Political Rights issued on December 29, 1990, the Election Officer affirmed, inter alia, that federal labor law gives IBT members who are not employed at a particular location of an employer a

right to campaign among their fellow IBT members. However, the Advisory also clarifies that this right is more limited than the right to campaign at one's own place of work.

Accordingly, if the location of the Yellow Freight facility at Tacoma prevented face-to-face contact between campaigning IBT members and their fellow members employed there, Yellow Freight's right of private property must yield to a limited right of access for the IBT members. Lechmere v. NLRB, 914 F.2d 313 (1st Cir. 1990), cert. granted, 59 U.S.L.W. 3635 (Mar. 18, 1991).

On the other hand, although federal law provides that the employer's property right must accommodate reasonable access to fellow union members, it does not entitle IBT members who are not employed at a particular facility to access at will to the internal areas of the plant.

Nor is there any allegation or evidence that Yellow Freight had established the right Mr. Frechin asserts through past practice.

Mr. Frechin first claims that he should have the right to gain access inside the Yellow Freight facility in Tacoma, Washington, to campaign in the non-work areas such as the employee break room. Following applicable federal law (as outlined in the Election Officer's Summary), and given Yellow Freight's past practice of refusing such access, the Election Officer concluded that Mr. Frechin is not entitled to access to non-work areas inside the Tacoma Yellow Freight facility. The Election Officer's decision here is correct.

This does not mean, however, that Mr. Frechin is to be denied complete access into the Tacoma Yellow Freight facility. The Election Officer found, and it is not disputed by Yellow Freight, that there is no public area adjacent to or near the Tacoma

facility on which IBT members can safely have face-to-face contact with Yellow Freight employees. Thus, the Election Officer concluded that non-employees, such as Mr. Frechin, are entitled to limited access to the Yellow Freight parking lot at the Tacoma facility for purpose of campaigning. Although Yellow Freight raised certain safety concerns regarding parking lot access, it is clear that these concerns have no merit. In fact, at the hearing before me, Yellow Freight conceded that they did not expect the Election Officer's decision to be reversed, rather Yellow Freight was seeking some clarification of the scope of the Election Officer's ruling.

To understand the Election Officer's ruling, a physical layout of the Tacoma facility is in order. Attached hereto is a non-scale drawing of the facility.

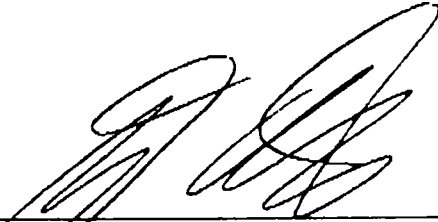
The Election Officer's ruling permits Mr. Frechin, and other members, to campaign within the employee and guest parking area designated on the drawing. The campaigners are directed to confine themselves to the parking area. In other words, they are not to loiter in the open areas where trucks will be traveling to or from the loading dock.¹ In addition, while campaigning, members cannot interfere in any way with employees who are working. This, of course, means that members cannot flag down or stop trucks which are entering or exiting the facility. What is anticipated is that

¹ Trucks enter through the gate, turn right, and drive to the loading dock area.

the members who wish to campaign will have free and open access to employees who are exiting their cars to go to work, or entering their cars as they are leaving work. As stated by the Election Officer in his Summary:

Campaigning in that area can be accomplished safely without disruption to the work at the facility while at the same time preserving to the members the right to personal campaigning that is protected under the law.

Accordingly, the Election Officer's ruling, as clarified herein, is affirmed.



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

Dated: May 1, 1991

