

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

October 2, 1991

VIA UPS OVERNIGHT

Archie J. Cook
4508 Balmoral Dr.
Richton Park, IL

E.J. Brach Co.
4656 W. Kinzie
Chicago, IL 60644

Peter Agliata
Secretary-Treasurer
IBT Local Union 738
220 S. Ashland Ave.
Chicago, IL 60607

Daniel Ligurotis
Secretary-Treasurer
IBT Local Union 705
300 S. Ashland Ave.
Chicago, IL 60607

William D. Joyce
Secretary-Treasurer
IBT Local Union 710
4217 S. Halsted St.
Chicago, IL 60609

Re: Election Office Case No. P-862-LU705/710/738-CHI

Gentlemen:

A protest was filed with the Election Office pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*"). In his protest Mr. Archie J. Cook alleges that his rights under the *Rules* were violated as a result of his exclusion from the private property of the E. J. Brach Co. ("Brach") manufacturing facility on the west side of Chicago. Mr. Cook and another IBT member, Mr. Al Brown, had sought access to the parking lots surrounding the facility for campaign purposes. The Election Officer's investigation of this protest revealed the following.

Brach maintains a manufacturing facility on the west side of Chicago employing approximately 2,700 persons. IBT Local Union 738 represents approximately 2,175 of these employees while IBT Local Union 710 represents approximately 25 employees. The plant runs three shifts with the majority of its employees working the first and

second shift.¹ Neither Mr. Cook nor Mr. Brown are Brach employees. Mr. Cook is a member of IBT Local Union 705 and Mr. Brown is a member of IBT Local Union 710.

The Brach plant occupies a seven block area bordered by railroad rights of way on the east and the south, Cicero Avenue on the west and an alley and side streets on the north. The parking lots, which totally surround the plant on the west and the north, occupy approximately 4 and a half blocks. With the exception of the gates and the access roads discussed below, the Brach facility is totally enclosed by a ten to twelve foot chain link security fence. The Brach facility is patrolled by security personnel and guards are stationed at the end of the access roads leading to the parking lots. All persons entering the facility are stopped once they reach these security checkpoints.

There are currently four entrances to the Brach facility. These entrances include two vehicle entrances off of Cicero Avenue; one entrance is at Cicero and Ferdinand Avenues which is a truck entrance and the other is at Cicero and Hubbard Avenues which is an employee pedestrian entrance. The Hubbard Avenue gate is used by employees who drive to work but park outside the company parking lots or who use public transit to and from work. Neither the Ferdinand nor the Hubbard intersections are controlled by a traffic light. There are stop signs at the corners of Ferdinand and Hubbard before those streets intersect Cicero. During shift changes uniformed Chicago police officers direct traffic at the intersection of Cicero and Ferdinand to assist Brach employees in entering and leaving the facility. There is also a pedestrian entrance used by employees near the intersection of Cicero and the Northwestern Railroad right of way. Brach has also opened another gate for employees at the end of Kilpatrick because of the congestion and disruption on Cicero caused by the reconstruction of that street.

Cicero Avenue is a heavily traveled four lane roadway. There is a seven foot public side walk between the Brach fence surrounding its parking lots and the roadway. The sidewalk widens to approximately 8 feet near the pedestrian entrance on Cicero. The area outside the fence to Cicero widens to approximately 14 feet at the on the south east corner of the intersection of Cicero and Hubbard. The additional space is taken up by a bus shelter with a bench for patrons waiting for the bus.

Kilpatrick Avenue dead ends into a gate entering the Brach facility. Kilpatrick is a two-way street which avenue runs north/south and is approximately 38 feet wide where it dead ends into the Brach facility. There is a twelve foot sidewalk outside of the gate on the east side of Kilpatrick. There is no sidewalk on the west side of Kilpatrick at the gate. An alley intersects Kilpatrick at the west side of this intersection.

¹ According to the information provided by Brach, 1,150 IBT members work on the first shift, 800 work on the second shift and 250 work on the third shift.

Employees, other than pedestrians, entering the facility from Cicero turn off that street on to Hubbard and proceed approximately 50 to 75 feet to a security check point. All persons entering the facility are stopped at that check point by security guards. The security fence continues along Hubbard for approximately 30 feet east of the intersection with Cicero. Adjacent to the checkpoint is a trailer for use by the security guards.

Cicero is currently undergoing a major renovation. Traffic has been limited to two lanes while the road is under construction. The flow of traffic has been affected by the construction and is particularly congested during the morning and afternoon shift changes. The sidewalks adjacent to Cicero have, at many places, been dug up limiting passage. Similarly, curb stones adjacent to the Hubbard street entrance have been removed and temporary barriers installed.²

On the morning of August 12, 1991, Cook and Brown entered the Brach's parking lot and began distributing campaign literature to employees. They were confronted by security personnel who asked them who they were. Cook allegedly refused to identify himself other than stating his first name and telling the guard that he was an IBT member who wanted to campaign in the employee parking lot. Cook and Brown were then told by Brach's security to leave the area. They were informed that they could distribute their literature on the sidewalk on the corner of Hubbard and Cicero. Cook argued that it was hazardous to attempt to distribute literature on that corner because of the congestion and the construction. Both Cook and Brown left the area without further campaigning.

In their submission to the Election Officer Brach challenges the jurisdiction of the Election Officer, arguing that it was neither a party to the Consent Order or the underlying Consent Order. Brach also argues, in the alternative, that under the appropriate legal standard, it has no obligation to permit non-employee access to its private property. Similar arguments concerning the jurisdiction of the Election Officer have been raised and rejected by the Election Officer, the Independent Administrator and by the United States District Court for the Southern District of New York in the Yellow Freight case and will not be restated here. See Election Office Case No. P-23-LU710-CHI, affirmed 91-Elec. App.-43; United States v. IBT, 88 Civ. 4486 (S.D.N.Y., April 3, 1991). As reflected in its position statement filed with the Election Officer, Brach is both familiar with the Yellow Freight decisions and the jurisdictional arguments raised in that litigation.

Brach also argues that under the decisions interpreting the right of non-employee

² On a visit to the facility it appeared that the temporary barriers had been changed as a result of being struck or run over by vehicles.

access under Section 7 of the National Labor Relations Act, it has no obligation to afford non-employee members access for campaign purposes to any of its private property. In the Election Officer's view, Brach misstates the applicable standard in addition to minimizing the unique circumstances created by the Cicero Avenue construction and the additional burdens placed on campaigners because of that disruption. Moreover, while Brach clearly has an important interest in maintaining security in its facility, such interest is not compromised by a limited incursion on to the roadway leading to the security checkpoint adjacent to the employee parking lots.

As the Federal Court has emphasized on numerous occasions, a free, fair and honest election lies at the heart of the process mandated by the Consent Order. One of the keys to a free and fair election is the right of IBT members to engage in a vigorous campaign where the issues and the merits of the various candidates are freely debated. The most effective form of campaigning, particularly for individual members who may not have access to communications, resources, is the face to face exchange of ideas. This exchange most often occurs in and around the work place. As the Supreme Court recognized in NLRB v. Magnavox Co., 415 U.S. 322, 323-324 (1974):

[t]heir place of work is the one location where employees are brought together on a daily basis. It is the one place where they clearly share common interests and where they traditionally seek to persuade fellow workers in matters affecting their union organizational life and other matters related to their status as employees.

The *Rules*, which have been approved by the United States Court of Appeals for the Second Circuit, IBT v. USA, 931 F.2d 177 (2nd Cir. 1991) (*Rules Decision*), recognize the importance of face to face workplace contact and require Local Unions to provide candidates or their representatives with information regarding the locations of worksites where IBT members are employed. See, e.g. *Rules*, Article VIII, Section 1.

In determining whether non-employee IBT members are entitled to access for campaign purposes to private property of employers of IBT members, the Election Officer applies the balancing test articulated by the National Labor Relations Board in Jean Country, 291 N.L.R.B. 4 (1988). See also, e.g. Laborers Local Union 204 v. NLRB, 904 F.2d 715, 717 (D.C. Cir. 1990) and Lechmere, Inc. v. NLRB, 914 F.2d 313 (1st Cir. 1990), cert. granted, 111 S.Ct. 1305 (1991). In balancing these rights, the Election Officer looks at the strength of the property interests of the employer and whether the non-employee IBT member has a reasonable alternative means of access to fellow members working at the facility in question. The *Rules* do not guarantee the optimum means of access, particularly where such access would infringe a strong property interest, rather the *Rules* provided for reasonable access that includes the possibility of face to face contact.

In the instant case, Brach clearly has a strong interest in the security of its

facility. The facility is located in an area where there have been a number of property crimes, including some involving employee cars parking in Brach's employee parking lots. This interest is evidenced by the security fence ringing the facility, the limitations on access to the facility and the presence of security guards. However, given the disruption created by the construction on Cicero Avenue, and the considerable distance between public property and the entrance of the plant, the nonmember IBT members do not have a reasonable means of access on non Brach's property.³

An examination of the facility reveals that there is an area through which the vast majority of employee pass which is not surrounded by the security fence. That area is Hubbard Street east of Cicero prior to the security check point. The access road leading from Cicero to the security check point is on Brach's property. However, a person does not "enter" Brach's security area until they have passed though the security checkpoint located 50 to 75 feet east of Cicero. Balancing the rights of IBT members to engage in campaign activities and Brach's interest in the security of its private property, the Election Officer concludes that the *Rules* require access by non-employee IBT members for campaign purposes, including the distribution of campaign literature, to that portion of Hubbard Street between Cicero Ave and the security checkpoint, marked a stop sign and a trailer, 50 to 75 feet to the east.⁴

Non-members have an effective means of communication from public property with the relatively small number of employees who enter the facility from the Pedestrian Gate on Cicero and the temporary gate at the end of Kilpatrick Avenue.⁵ There is a public side walk in front of the pedestrian gate and a side walk on the east side of the

³ Brach attempts to justify its non-access policy by pointing to prior leafletting of its employees at the facility by non-employees. They have alleged in general terms that leafletting from the public sidewalk adjacent to the Brach's facility was effective. Brach has offered no proof to support its claim that there is a reasonable alternative means of face to face campaigning from this adjacent public property. More importantly, however, is Brach's failure to consider the disruption on Cicero avenue, the site of the prior leafletting, on the access issue and the rights of IBT members not employed by Brach to contact Brach employees for campaign activities.

⁴ During the course of the Election Officer's investigation Brach represented that the Ferdinand street entrance to its facility was reserved for trucks and not used by employees entering and leaving the facility. The Ferdinand street entrance is otherwise identical to the Hubbard street entrance. To the extent that employees have, or begin to use the Ferdinand street entrance, nonmembers must have similar access to the portion of Ferdinand street east of Cicero and prior to the security checkpoint.

⁵ Brach informed the Election Officer that approximately 70 employees use the Kilpatrick gate and 150 employees use the pedestrian gate off of Cicero each day.

Kilpatrick gate.

In light of the foregoing the Election Officer orders the following:

1. Brach shall permit non-employee IBT members to engage in campaign activity on its private property at the employee vehicle/pedestrian gate adjacent to Cicero Avenue. This area of campaigning shall be limited to the Hubbard Street entrance running 50 to 75 feet east of Cicero to the security checkpoint marked by a stop sign and a guards' trailer. To the extent that the Ferdinand gate is used as employee entrance, similar access shall be afforded to that entrance.

2. Non-employee IBT members who wish to campaign on Brach's property shall, prior to commencing such activity, present themselves to the security guard stationed at the entrance and identify themselves. Such members shall produce a drivers license or a IBT dues receipt. Campaigning non-employee IBT members shall not interfere with the flow of traffic.⁶ The number of non-employees campaigning in the entrance area shall be limited to 5 at any one time.

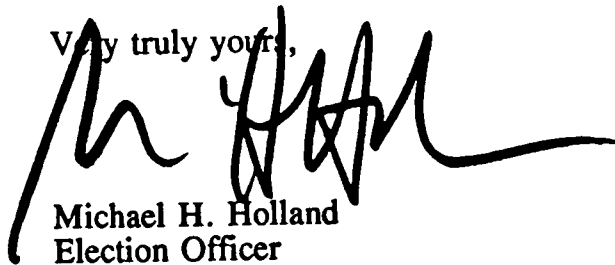
3. IBT members, whether or not employed by Brach, shall continue to enjoy the right to campaign on public property adjacent to Brach property without restriction by Brach.

⁶ The Election Officer has not imposed a limitation on the times during which non-employee campaign activity can take place. However, the individuals filing the protest have indicated that they are interested in leafletting during shift changes. They have indicated to the Election Officer that they would be willing to focus there campaigning during the period a half hour before and a half hour after a shift change. If Brach discloses the times of its shift changes and the number of employees on the shifts to non-employee IBT members seeking to campaign, it is possible that a voluntary limitation of the times that campaigning is to take place could be worked out between the parties.

Archie J. Cook
Page 7

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,

A handwritten signature in black ink, appearing to read "M. H. Holland", with a long horizontal flourish extending to the right.

Michael H. Holland
Election Officer

cc: Frederick B. Lacey, Independent Administrator
Julie Hamos, Regional Coordinator
Mark J. Kupiec, Adjunct Regional Coordinator

1. Brach shall permit non-employee IBT members to engage in campaign activity on its private property at the employee vehicle/pedestrian gate adjacent to Cicero Avenue. This area of campaigning shall be limited to the Hubbard Street entrance running 50 to 75 feet east of Cicero to the security checkpoint marked by a stop sign and a guards' trailer. To the extent that the Ferdinand gate is used as employee entrance, similar access shall be afforded to that entrance.

2. Non-employee IBT members who wish to campaign on Brach's property shall, prior to commencing such activity, present themselves to the security guard stationed at the entrance and identify themselves. Such members shall produce a drivers license or a IBT dues receipt. Campaigning non-employee IBT members shall not interfere with the flow of traffic. The number of non-employees campaigning in the entrance area shall be limited to 5 at any one time.

3. IBT members, whether or not employed by Brach, shall continue to enjoy the right to campaign on public property adjacent to Brach property without restriction by Brach.

On October 3, 1991, through counsel, Brach appealed the October 2, 1991, determination of the Election Officer and requested a hearing before the Independent Administrator. A copy of the request for hearing is annexed hereto as Exhibit C.

Prior to completion of a formal hearing before the Independent Administrator, the matter was resolved by Agreement between the parties. The first paragraph of that Agreement provides as follows:

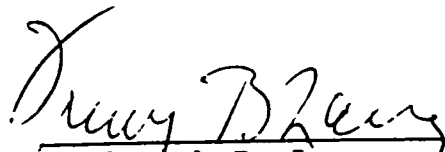
1. Upon review and approval by the Independent Administrator, the Independent Administrator shall submit this Agreement to Judge Edelstein for his review and approval so that this Agreement can be so ordered. This approved

order will be in lieu of providing physical access to any IBT members not employed by Brach to its private property.

A copy of the complete Agreement is attached hereto as Exhibit D.

I find that the Agreement, by its terms, serves to resolve this matter in a fair and equitable manner. Submitted herewith is a proposed form of Order seeking Your Honor's approval of the Agreement.

Therefore, I respectfully request that Your Honor execute the proposed Order. This will, in effect, serve to have the Agreement entered into by the parties "so ordered" by the Court. Thereafter, it is respectfully requested that a member of Your Honor's staff file the original "backed" Application and proposed Order with the Clerk.



Frederick B. Lacey
Independent Administrator

Dated October 16, 1991

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

vs.

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF
AMERICA, AFL-CIO, et al.

Defendants.

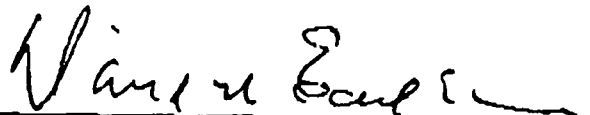
88 Civ. 4485 (DNE)

ORDER

WHEREAS, the Court has reviewed Application LV of the Independent Administrator and the attachments thereto and is fully familiar with that Application and all prior proceedings in this matter; and

WHEREAS, it appears to the Court that the terms of the Agreement between the parties to Election Office Case No. P-862-LU705/710/738-CHI serve to resolve that case in a fair and equitable manner;

IT IS HEREBY ORDERED that Election Office Case No. P-862-LU705/710/738/CHI is fully and completely resolved (pursuant to Agreement between the parties) by order of this Court in accordance with its exclusive and continuing jurisdiction to supervise the implementation of the Consent Order and to decide all issues arising under the Consent Order.


David N. Edelstein, U.S.D.J.

Dated: October 17, 1991
New York, New York