

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

August 16, 1991

VIA UPS OVERNIGHT

Archie J. Cook
4508 Balmoral Dr.
Richton Park, IL 60471

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

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

Robert T. Simpson, Jr.
President
IBT Local Union 743
300 South Ashland Avenue
Chicago, IL 60607

Re: Election Office Case No. P-863-LU705/710/743-CHI

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Archie J. Cook, a member of Local Union 705. Mr. Cook alleges that he and other IBT members who support the campaign of General President candidate Ron Carey and other members of the Carey slate are being denied their rights to campaign on company property by a "plethora of employers." Mr. Cook seeks the Election Officer to "make a blanket ruling regarding the Carey supporters to campaign at every work site."

IBT members' rights to engage in campaign activities on the property of employers of IBT members is governed by Article VIII, § 10(d) of the *Rules*. That section of the *Rules* provides that "no restrictions shall be placed upon candidates' or members' pre-existing rights to solicit support, distribute leaflets or literature, conduct campaign rallies, hold fund raising events or engage in similar activities on employer or Union premises." (emphasis added). Under the *Rules*, such pre-existing rights are not rights granted by the Election Officer; rather, pre-existing rights are rights that IBT members otherwise enjoy under substantive federal or state statutory or case law.

The right of IBT members, such as Mr. Cook, to engage in campaign activities on the private property of an employer other than such member's own employer is limited. Such member's right to such access is dependent upon the nature of property interest, that is, whether the property although technically private is open to the public, the historical practices of the employer with respect to providing access to non-

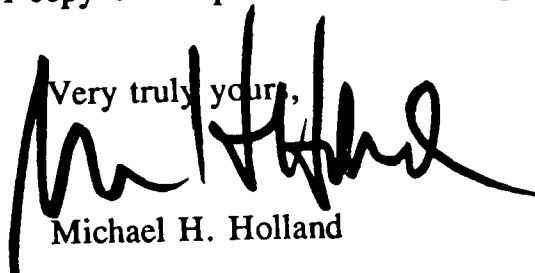
Archie J. Cook
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employees, and the physical siting of the property. Lechmere v. NLRB, 914 F.2d 313 (1st Cir., 1990); National Maritime Union v NLRB, 867 F. 2d 767 (2nd Cir., 1989); Trident Seafoods Corp., 293 NLRB 125 (1989). An IBT member not employed by a particular employer would have the right to enter on the property of such employer if, but only if, denial of access would prevent effective communications with such employer's own employees. Jean Country, 291 NLRB No. 4 (1988). The analysis is factual in each case. The property must be viewed. After physically seeing property, a balancing test must be applied to determine whether communications are possible on public lands or whether access to the employer's private property is required.

The Election Officer cannot determine whether Mr. Cook and other IBT members who are his political allies are entitled to obtain access to the private property of any particular employer without a physical viewing of the facility. The Election Officer cannot and will not have personal visits made to each of the over 44,000 employers, many with multiple facilities, who have collective bargaining agreements with the IBT. Without such visits, no determinations may be made with respect to the right of access. It would be totally inappropriate, violative of the *Rules* and a usurpation of the jurisdiction of both the Election Officer and the Independent Administrator for the Election Officer to permit Mr. Cook or any other IBT member to make the determination regarding the right of access himself or herself. No employer of IBT members is required to abide by an access decision, other than one properly made by the Election Officer through the protest procedures of the *Rules*. Accordingly, this protest is DENIED in its entirety.

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/mjv

cc: Frederick B. Lacey, Independent Administrator
Julie E. Hamos, Regional Coordinator