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October 29, 1991

VIA UPS OVERNIGHT

Bilal Chaka
2831 Magnolia
Long Beach, CA 90806

Ed J. Mireles
Secretary-Treasurer
IBT Local Union 952
140 S. Marks Way
Orange, CA 92668

Albertson's
851 N. Harbor Blvd.
La Habra, CA 90631

Re: Election Office Case No. P-986-LU952-CLA

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Bilal Chaka, a member of Local Union 952 and a supporter of General President candidate Ron Carey. Mr. Chaka claims that Albertson's Distribution Center located in Brea, California interfered with his rights and the rights of other IBT members by prohibiting them from engaging in campaign activities in the parking lot of its Brea, California facility. The protest was investigated by Regional Coordinator Geraldine Leshin.

On October 15, 1991, Mr. Chaka and three other IBT members, all of whom, like Mr. Chaka, support the candidacy of Ron Carey for General President of the IBT, were campaigning in the parking lot at the Brea, California facility of Albertson's Distribution Center. Approximately ten minutes after arriving at the parking lot, a security guard employed by Albertson's required that they leave the private property of the facility.

Neither Mr. Chaka nor the other persons with whom he was campaigning on October 15, 1991 are employees of Albertson's. All the campaigners are, however, IBT members. Other than Mr. Chaka, none are members of Local 952, the Local to which Albertson's employees belong.

Union members have a right protected by substantive federal law, and thus by Article VIII, § 10(d) of the *Rules*, to engage in communications, solicitations and the like with respect to intra-union affairs including intra-union elections. District Lodge, 91 International Association of Machinists v. NLRB, 814 F.2d 876 (2nd Cir., 1987); NLRB v. Methodist Hospitals Gary, Inc., 732 F.2d 43 (7th Cir., 1984); ABF Freight System v. NLRB, 673 F.2d 229 (8th Cir., 1982). The right to engage in such communications

includes the right to access to an employer's property, under certain circumstances, by labor union members who are not employees of that employer.

Where denial of all access to the property of an employer would prevent effective communications with such employer's employees, private property rights must accommodate the right to engage in such communication-type activities. Jean Country, 291 NLRB No. 4 (1988). Since the substantive federal right to engage in communication and solicitation includes the right to engage in such communication and solicitations with respect to intra-union election activities, the employer's rights to private property must accommodate the right to engage in such campaign activities. Since the right is an existing right under substantive federal law, it is protected under Article VIII, § 10(d) of the *Rules*.

Property that is purely public cannot be controlled by the employer, who cannot interfere with protected activity including campaigning activities on such property. Lechmere v. NLRB, 914 F.2d 313 (1st Cir., 1990). An employer's rights with respect to property which is technically private, but open to the public, such as shopping malls, access roads and parking lots, are normally insufficient to overrule the right to access by non-employees. Where the employer has traditionally permitted non-employees to engage in solicitation, even if other than union solicitation, on its property, such practices demonstrate that the private property interest is insufficient to override access rights for union activities, including intra-union election activities, and access to union members other than employees must be afforded. Even where the employer has restricted its property to access by its employees only, such rights cannot outweigh the rights of non-employees to have access to the property if no effective alternative means of communication exist. Lechmere v. NLRB, *supra*; Trident Seafoods Corp., 293 NLRB 125 (1989). The alternate means must be reasonable, not overly costly or time-consuming and must generally permit face-to-face communications. National Maritime Union v. NLRB, 867 F.2d 767 (2nd Cir., 1989).

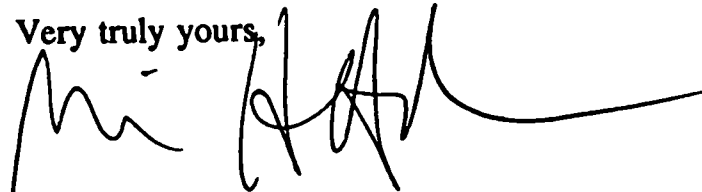
Thus, in the instant case, Albertson's property interest must yield to a limited right of access by IBT members not employed by Albertson's, if denying such access would prevent effective communications between IBT members not employed by Albertson's and those so employed. The Election Officer investigation reveals that all IBT members employed at the Brea facility enter Albertson's property via Puente Street; a driveway intersects Puente Street and continues for approximately 30 feet at the end of which is a guard shack and a gate. Albertson's employees park in the employee parking lot, which is located along Puente Street and to the right of the driveway entrance. The guard shack is located at the corner of the parking lot and monitors entry both to the parking lot and to the facility. There is a public sidewalk between the Puente Street and the employee parking lot. The driveway into Albertson's intersects the sidewalk. By standing on the public sidewalk next to the driveway, IBT members not

employed by Albertson's may gain access for campaigning purposes to all IBT members employed by Albertson's Distribution Center in Brea, California.

The Election Officer determines that meaningful access to IBT members employed at Albertson's can be provided without intrusion upon Albertson's private property rights. See Election Office Case No. P-165-LU-299-MGN, affirmed 91-Elec. App.-43 (access to Yellow Freight property denied where a 10-foot public area was available). Thus, there is no requirement under the *Rules* that Albertson's permit IBT members not employed by it to have access to its private property located on Puente Street in Brea, California. Accordingly, 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) 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/ca

cc: Frederick B. Lacey, Independent Administrator

Geraldine L. Leshin, Regional Coordinator

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