

October 2, 1998

Tom Leedham  
c/o Tom Leedham Campaign Office  
P.O. Box 15877  
Washington, DC 20003

Alan Reiner, Esq.  
Corporate Counsel  
Fleming Companies  
5701 N. Shartel  
Oklahoma City, OK 73118

Robin Whitten, Plant Manager  
Fleming Foods Warehouse  
624 S. 25<sup>th</sup> Ave.  
Phoenix, AZ 85009

Arthur Z. Schwartz, Esq.  
Kennedy, Schwartz & Cure  
113 University Place  
New York, NY 10003

**Re: Election Office Case No. PR-229-TLC-PNW**

Gentlemen:

Tom Leedham, a candidate for general president, filed a pre-election protest pursuant to Article XIV, Section 2(b) of the *Rules for the 1995-1996 IBT International Union Delegate and Officer Election ("Rules")* against Fleming Foods Warehouse ("Fleming") in Phoenix, Arizona. Mr. Leedham alleges that when he visited Fleming in order to campaign, he was denied access to the employee parking lot in violation of the *Rules*. As a remedy, Mr. Leedham requests that the Election Officer order Fleming to pay for a return visit by Mr. Leedham so he may campaign in the employee parking lot.

Fleming responds that it does not allow non-employees inside its property and that candidates have always campaigned outside its entry gate.

This protest was investigated by Adjunct Regional Coordinator Paige Keys.

The facts are not in dispute. On August 11, 1998, Mr. Leedham went to Fleming in Phoenix, Arizona in order to campaign. He was not allowed inside the fenced area into the employee parking lot.

Article VIII, Section 11(e) of the *Rules* creates a limited right-of-access to IBT members and candidates to distribute literature and seek support for their campaign in any parking lot used by union members to park their vehicles in connection with their employment. While "presumptively available," this right is not without limitations. It is not available to any employee on working time and candidates and their supporters cannot solicit or campaign to employees who are on working time. It is also restricted to campaigning that will not

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materially interfere with an employer's normal business activities. An employer may require reasonable identification.

Deputy Election Officer Benetta Mansfield discussed the denial of access with Corporate Counsel for Fleming Companies Alan Reiner. Mr. Reiner has agreed that Fleming Foods in Phoenix will permit parking lot access for the duration of the International officer rerun election. Given the level of security surrounding the facility, Mr. Reiner asks members and candidates who desire to campaign pursuant to the **Rules** to contact the Phoenix Plant Manager, Robin Whitten at 602-269-5200, the day before he or she intends to campaign.

Regarding Mr. Leedham's request for travel expenses to return to Phoenix, the Election Officer rejects this request. In these circumstances where the protest is resolved and the employer has agreed to permit access, such a remedy is inappropriate.

Accordingly, the Election Officer is satisfied that the protest has been RESOLVED.

Any interested party not satisfied with this determination may request a hearing before the Election Appeals Master within one day of 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:

Kenneth Conboy, Esq.  
Latham & Watkins  
885 Third Avenue, Suite 1000  
New York, NY 10022  
Fax (212) 751-4864

Copies of the request for hearing must be served on the parties listed above as well as upon the Election Officer, 400 N. Capitol Street, Suite 855, Washington, DC 20001, Facsimile (202) 624-3525. A copy of the protest must accompany the request for a hearing.

Sincerely,

Michael G. Cherkasky  
Election Officer

cc: Kenneth Conboy, Election Appeals Master  
Paige Keys, Adjunct Regional Coordinator