

**OFFICE OF THE ELECTION ADMINISTRATOR  
for the  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS**

<b>IN RE: MICHAEL RUSCIGNO,</b>	)	
	)	Protest Decision 2000 EAD 44
	)	Issued: November 1, 2000
<b>Protestor.</b>	)	OEA Case No. PR100201AT
	)	
	)	
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Michael Ruscigno, a member of Local 802, filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2000-2001 IBT International Union Delegate and Officer Election (“Rules”) against Ritter Sysco Foods (“RSF”). The protester alleges that on October 1, 2000, RSF improperly prevented Ruscigno and IBT member Mike Masterson from distributing campaign literature to IBT members in the parking lot at its facility on Theodore Conrad Drive in Jersey City, New Jersey. Ruscigno alleges that RSF’s conduct violates Article VII, Section 11(e) of the *Rules*.

Election Administrator representative Lois Tuttle investigated the protest.

**Findings of Fact**

Michael Ruscigno is a member of IBT Local 802, and Mike Masterson is a member of Local 641. At 6:00 p.m. on October 1, Ruscigno and Masterson arrived at RSF’s Jersey City facility for the purpose of soliciting support for Tom Leedham’s candidacy for IBT General President. IBT Local 863 represents RSF’s employees. RSF’s night shift workers arrive for work at around 7:00 p.m. Ruscigno and Masterson intended to solicit support among the arriving night shift workers. They had previously solicited support among RSF’s employees in the RSF employee parking lot in Jersey City in August 2000 without incident.

Ruscigno and Masterson entered the gate to the RSF parking lot on October 1 in their car, which they parked in a visitor section of the lot. There was no guard at the gate surrounding the lot. They then began handing out Convoy Dispatch and other materials that they were using to solicit support for Leedham’s candidacy. After about 10 minutes, a guard approached and asked them what they were doing. They explained that they were campaigning for an IBT candidate, and showed him a copy of a protest decision that Ruscigno had obtained against another employer. The guard said that he did not care about that and had been told to look out for IBT campaigners. Ruscigno said that they were not disrupting company operations, and the guard replied that they were because the company did not want anyone to know about this. The guard told them they had to leave.

Ruscigno and Masterson refused. The guard made a telephone call and two other persons appeared. They also told Ruscigno and Masterson to leave, and said they had

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spoken to the company's vice president of operations, Rick Hutter, and had called the police. They refused to look at Ruscigno's protest decision. Soon thereafter, the police arrived. Ruscigno showed the police a copy of the protest decision. The police noted that it did not involve RSF and told them they would have to leave the property. Ruscigno and Masterson did so. They stood outside the gate to the company property for a few minutes. Hutter drove up during this time and stopped to talk to them. He told Ruscigno and Masterson that neither side in the Teamsters election would be allowed to campaign on company property. He refused to look at Ruscigno's protest decision.

RSF, through its counsel, did not contest the protestor's factual allegation that parking lot access for campaign purposes had been denied. Instead, RSF claims that there is nothing in the law that gives the Election Administrator authority to require an employer to allow non-employees on its property for IBT campaign purposes.<sup>1</sup>

### **Analysis and Conclusion**

Article VII, Section 11(e) of the *Rules* states that "candidate[s] for delegate or alternate delegate and any member of the candidate's Local Union may distribute literature and/or otherwise solicit support in connection with such candidacy in any parking lot used by that Local Union's members to park their vehicles in connection with their employment." Section 11(e) further provides that "candidate[s] for International office and any Union member within the regional area(s) in which said candidate is seeking office may distribute literature and/or otherwise solicit support in connection with such candidacy in any parking lot used by [IBT] members to park their vehicles in connection with their employment in said regional area(s)." IBT members have the reciprocal right under the Article VII, Section 11(e) of the *Rules* to be so solicited and to receive literature offered for distribution.

These rights are available only in connection with campaigning during the 2000-2001 International Union delegate and Officer elections conducted pursuant to the Consent Order<sup>2</sup>. These campaign rights apply "only during times when the parking lot is normally open to employees" and "do not extend to campaigning which would materially interfere with the normal business activities of the employer." Further, these rights "are not available to an employee on working time, [and] may not be exercised among employees who are on working time..." Additionally, the employer "may require reasonable identification to assure that a person seeking access to an employee parking lot pursuant to th[e] rule is a candidate or other [IBT] member entitled to such access."

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<sup>1</sup> RSF has not claimed that special circumstances justify a limitation on the campaign access rights established by the *Rules*.

<sup>2</sup> The "Consent Order" as that term is used in the *Rules* means "the March 14, 1989 agreement approved by the [United States District] Court [for the Southern District of New York, the Honorable David N. Edelstein presiding, and] entered into between and among the United States Government, the International Union and others in the case of *United States of America v. International Brotherhood of Teamsters, et al.*, 88 Civ. 4486 (DNE)(S.D.N.Y.), as amended, and all subsequent opinions, rulings and orders interpreting it." *Rules, Definition 8*.

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Article VII, Section 11(e) also provides that nothing in its provisions “shall entitle any candidate or other [IBT] member to access to any other part of premises owned, leased, operated or used by an employer or to access to a parking lot for purposes or under circumstances other than as set forth herein.”<sup>3</sup>

These limited access rights are “presumptively available, notwithstanding any employer rule or policy to the contrary, based upon the Election Administrator’s finding that an absence of such rights would subvert the Consent Order’s objectives of ensuring free, honest, fair, and informed elections and opening the Union and its membership to democratic processes.” This presumption, however, may be rebutted by the employer’s demonstration “that access to Union members in an employee parking lot is neither necessary nor appropriate to meaningful exercise of democratic rights in the course of the 2000-2001 election.” Further, “[a]n employer seeking to deny access to Union members in an employee parking lot may seek relief from the Election Administrator at any time.”

The limited-access rule is a necessary infringement upon employer property rights, and is limited so that such rights are infringed upon only to the extent necessary to implement the Consent Order goal of providing for “free, fair and democratic election[s].” *United States v. IBT*, 896 F. Supp. 1349, 1367 (S.D.N.Y. 1995), *aff’d*, 86 F.3d 271 (2d Cir. 1996). There, Judge Edelstein approved the limited-access rule, finding it “crucial to the achievement” of such an election process. *Id.* at 1367.

We find that RSF violated these provisions of the *Rules* here. RSF’s denial of parking lot access is undisputed. Nor is there any evidence that the protestor’s presence in the RSF employee parking lot interfered with or disrupted RSF’s operations in any way. The employees with whom the petitioners were attempting to interact were those either on their way to or from work or on break. Such access is precisely the kind of campaign activity permitted by the *Rules*.

Accordingly, the protest is GRANTED.

### **Remedy**

When the *Rules* have been violated, the Election Administrator “may take whatever remedial action is appropriate.” Article XIII, Section 4. In fashioning the appropriate remedy, the Election Administrator considers the nature and seriousness of the violation, as well as its potential for interfering with the election process. Based on the foregoing, the Election Administrator orders RSF to cease and desist from any denial of access to IBT members to its employee parking lots in violation of Article VII, Section 11(e) of the *Rules*.

An order of the Election Administrator, unless otherwise stayed, takes immediate

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<sup>3</sup> Separately, Article VII, Section 11(f) of the *Rules* provides that “an employer’s discrimination in permitting access to its property shall constitute an improper contribution to the candidate(s) who benefit from such discrimination.”

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effect against a party found to be in violation of the *Rules*. *Lopez*, 96 EAM 73.

Any interested party not satisfied with this determination may request a hearing before the Election Appeals Master within two (2) working days of receipt of this decision. The parties are reminded that, absent extraordinary circumstances, no party may rely in any such appeal upon evidence that was not presented to the Office of the Election Administrator. Requests for a hearing shall be made in writing, shall specify the basis for the appeal, and shall be served upon:

Kenneth Conboy  
Election Appeals Master  
Latham & Watkins  
Suite 1000  
885 Third Avenue  
New York, New York 10022  
Fax: 212-751-4864

Copies of the request for hearing must be served upon all other parties, as well as upon the Election Administrator for the International Brotherhood of Teamsters, 727 15<sup>th</sup> Street NW, 10<sup>th</sup> Floor, Washington, DC 20005, all within the time period prescribed above. A copy of the protest must accompany the request for hearing.

*William A. Wertheimer, Jr.*

William A. Wertheimer, Jr.  
Election Administrator

cc: Kenneth Conboy  
Lois Tuttle  
2000EAD44

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