

OFFICE OF THE ELECTION ADMINISTRATOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: TIM ALEXANDER,)	
)	Protest Decision 2000 EAD 52
Protestor.)	Issued: November 29, 2000
)	OEA Case No. PR101901MW
)	
)	
_____)	

Tim Alexander, a member of Local 26, 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 Rantoul Products, Textron, Inc. (“RPTI”) and Local 26. The protester alleges that on October 18, 2000, RPTI improperly prevented Alexander and other IBT members from distributing campaign literature in support of the Members Voice Slate at RPTI’s facility in Rantoul, Illinois. Karnia alleges that RPTI’s and Local 26’s conduct violates Article VII, Section 11(e) of the *Rules*.

Election Administrator representative Lisa Taylor investigated the protest.

Findings of Fact

On October 18, 2000, Alexander and other Local 26 members who were supporters of the seven person Members Voice Slate arrived at RPTI’s facility to distribute leaflets in support of the slate’s members, five of whom who were candidates both for delegate and local union office.¹ They distributed the leaflets for a short period in Rantoul’s employee parking lot, until a security guard approached them and ordered the campaigners to leave.

According to Valencia Johnson, a Local 26 steward at RPTI, she was at work in the RPTI facility at the time of the incident, and was approached at around 5:30 p.m. by her supervisor Bob Wehe. Wehe told her she was needed outside. When she arrived in the parking lot area, she saw the campaigners and a security guard who showed her a stack of papers that the campaigners had given to the security guard, who referred to the papers as a “court order.” (The papers were actually a copy of a prior Election Administrator parking lot access decision.)

¹ The leaflets, entitled “Introducing the Members Voice Slate,” referred to the “upcoming Officer and Delegate Elections for Local 26 Teamsters.” The leaflets asked for member support for the slate, and pictured the seven slate members and the local union office positions that they sought. We find, contrary to the local’s argument, that the leaflet was sufficiently related to the upcoming local delegate elections to fall within coverage of the *Rules*. (Ballots in the Local 26 delegate election are to be mailed on December 4, 2000.)

Johnson glanced at the papers. She told our investigator that she knew they were not a court order because she had seen court orders before and knew that they were not that long. As Johnson admitted to our investigator, she then told the security guard that the campaigners were trespassing and said that the guard should call RPTI Vice President of Operations Eric White and have the campaigners removed. Johnson said that she reached this conclusion and gave these directions because RPTI had a policy that prohibited campaign activity on its property. Johnson also admits that, upon request, she gave her name (but not her telephone number) to the campaigners. Johnson stated that one of the campaigners made a negative comment about the kind of service members were receiving from their union steward.

Johnson also admits that before she went back into the plant she called Connie Dennis, a Local 26 business agent, and that she did so because the guards could not reach White. According to Johnson, she explained the situation to Dennis, who told her to let the Company handle the situation. Johnson claims that she then returned into the plant.

According to an incident report generated by the company, the campaigners were directed by RPTI security to leave the premises before Johnson's involvement. They did not, however, leave until after Johnson intervened. Dennis corroborates Johnson's claim that Dennis told Johnson to let the company handle the access issue. Dennis states that she never told Johnson or RPTI's security guards or management to have the campaigners removed from RPTI property. Dennis states that one of the security guards (named Chet) asked her to come to the plant and that she refused. Dennis also states that she is aware that Chet told the campaigners that they were being removed pursuant to Dennis' orders. Dennis states that RPTI has never allowed campaigning on its property.

"Chet" is Chester Conley, a RPTI security who spoke with our investigator. When he arrived at the site of the incident, the dispute between the campaigners and security had already started. Johnson was present and was on the phone with Dennis. Johnson told Conley that Dennis wished to speak with him. He took the phone. According to Conley (whom we credit because of his neutrality in this matter), Dennis reminded him that RPTI's policy prohibited any type of campaign activity on its property. Conley told Dennis that he was fully aware of this policy. While Conley states that he did not perceive that Dennis was ordering him to have the campaigners removed, it is certainly the case that Dennis did nothing to bring to Conley or any other RPTI representative the access rights available under the *Rules*. According to Conley, when he told Dennis that the campaigners had given him a "court order" providing for access rights, she told him that no such court order existed. After the conversation between Conley and Dennis, RPTI's security personnel directed the campaigners to leave the premises. They left only after the guards threatened to call the police.

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 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 election conducted pursuant to the Consent Order.² The right to engage in such campaigning applies "only during times when the parking lot is normally open to employees" and "do[es] not extend to campaigning which would materially interfere with the normal business activities of the employer." The rights guaranteed by Article VII, Section 11(e) "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." 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."³

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." Article VII, Section 11(e). An employer however may rebut this presumption "by demonstrating to the Election Administrator 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...[, and] may seek relief from the Election Administrator at any time." *Id.*

² 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.*

³ 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."

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.

On November 8, 2000, the United States District Court for the Southern District of New York, Preska, J., entered an order approving the access provisions of the *Rules*. A copy of that order is attached hereto as Attachment A. Judge Preska held that “it is critical that ... IBT election[s] [are] conducted in a fair, open and democratic fashion... I find the Access Rule to be a necessary means by which to achieve this goal, specifically to permit candidates and members to have meaningful, face-to-face interaction.” *Id.* at 14.

We find that RPTI and Local 26 violated these provisions of the *Rules* here.⁴ RPTI’s denial of parking lot access is undisputed. Nor is there any evidence that the presence of Alexander or other IBT members in the RPTI employee parking lot interfered with or disrupted RPTI’s operations in any way.

Local 26’s violation of the *Rules* here is particularly egregious. As an affiliate of the IBT, Local 26 and its agents have a solemn obligation to avoid interference with the right of members to engage in protected campaign activity under the *Rules*. Yet here, both steward Johnson and Business Agent Dennis undermined those rights by Johnson’s admitted direction that the campaigners be removed, and by Dennis’ reminder to Conley of RPTI’s no-access policy, and her failure to inform Conley of the access rights established by the *Rules*. This is so even if, as may be the case, the ejection of the campaigners would have occurred without the actions of Johnson and Dennis.

For the foregoing reasons, 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 RPTI and Local 26 to cease and desist from any denial of access by IBT members to RPTI’s employee parking lots in violation of Article VII, Section 11(e) of the *Rules*. Further, the Election Administrator orders Local 26 to mail a copy of this decision and its Attachment A to each member of the local union employed at RPTI within five (5) days of the local’s receipt of this decision.

⁴ The *Rules*, while not then approved by Judge Edelstein, were in effect prior to August 10, 2000.

Alexander, 2000 EAD 52
November 29, 2000

Within two (2) days of such mailing, Local 26 shall file an affidavit with the Election Administrator attesting that such mailing has been completed.

An order of the Election Administrator, unless otherwise stayed, takes immediate effect against a party found to be in violation of the *Rules*. *Lopez*, 96 EAM 73 (February 13, 1996).

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, c/o International Brotherhood of Teamsters, 25 Louisiana Ave., NW, 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
Dennis Sarsany
2000 EAD 52

Alexander, 2000 EAD 52
November 29, 2000

DISTRIBUTION LIST VIA UPS NEXT DAY AIR:

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Washington, DC 20001

Rantoul Products, Textron, Inc.
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