

OFFICE OF THE ELECTION OFFICER  
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
25 Louisiana Avenue, NW  
Washington, DC 20001  
(202) 624-8778  
1-800-828-6496  
Fax (202) 624-8792

Michael H Holland  
Election Officer

Chicago Office  
% Cornfield and Feldman  
343 South Dearborn Street  
Chicago, IL 60604  
(312) 922-2800

November 1, 1991

**VIA FACSIMILE WHERE NOTED AND UPS OVERNIGHT**

Gerald Moerler  
13104 Glen Ct. #40  
Chino Hills, CA 91709

R. V. Durham  
c/o Hugh J. Beins, Esq.  
Beins, Axelrod, Osborne  
& Mooney  
2033 K Street, N.W.  
Washington, D.C. 20006  
(FAX: 202-547-1990)

Everett J. Roberts  
Trustee  
IBT Local Union 63  
1616 W. Ninth Street  
Room 205  
Los Angeles, CA 90015  
(FAX 213-487-7924)

United Parcel Service  
1391 Spruce Street  
Riverside, CA 92507

**Re: Election Office Case No. P-1000-LU63-CLA**

Gentlemen:

A protest was filed with the Election Office pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules"). In his protest, Gerald Moerler alleges that Chuck Mack, a member of the R. V. Durham Unity Team slate, campaigned in the interior of a United Parcel Service ("UPS") facility in Riverside, California. Mr. Moerler further alleges that candidate Ron Carey, and members of his slate, have been denied similar access to the interior of the UPS facility at Riverside. The Election Officer's investigation revealed the following.

On October 14, 1991, between 7:00 and 7:30 am, Chuck Mack, a candidate for International Vice President running on the R. V. Durham Unity Team slate, arrived at the UPS facility at Riverside in the company of a Local Union 63 Business Agent. At approximately 7:30 am Mack and the Business Agent were observed by a UPS manager in a work area in the vicinity of a loading belt which was in operation. Mack was being shown around by the Business Agent and was introduced to employees. The manager saw Mack again at 8:00 am near a coffee truck in a non-work area outside of the terminal building talking to some UPS employees who were on a break. Mack was introduced to two individuals who were identified as supervisors. The same manager who saw Mack inside the terminal found some campaign literature for Mack's International officer campaign in the terminal at noon after Mr. Mack had left the facility. At no time was Mr. Mack asked the purpose of his visit by UPS management. At no time was Mr. Mack asked to leave the facility. When he left, he did so voluntarily and to enhance his ability to campaign among the IBT members employed by the Riverside UPS facility;

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he left to talk to such members while they were on their break outside the terminal building.

UPS contends that Mack appeared at the facility unannounced and that its managers believed that Mack was a Local Union representative. UPS further contends that Mack, a Union Trustee of the Western Conference of Teamsters Pension Trust, was talking to employees about recent changes in the benefits available under the Trust. While UPS apparently concedes that Mack was inside the terminal it argues that he was there on union business.<sup>1</sup> The Election Officer's investigation revealed that while Mack did discuss changes in Trust benefits, the primary purpose of his visit was to campaign with respect to the upcoming IBT International Union election and to solicit support from IBT members employed at that facility for his candidacy. In addition, it appears that the Business Agent who accompanied Mack on his visit to the facility left copies of Mack's campaign literature at the Riverside facility.

As noted above, when Mr. Mack left the loading belt area of the facility, he did so to speak to IBT members who were outside the facility on their break. He campaigned among these members in an area where a coffee truck normally parks and employees of the facility purchase coffee and other refreshments. This area is adjacent to the unrestricted parking area open to the public. While there, he talked to supervisory employees of UPS, introducing himself as a candidate for IBT International Union office. He was not asked at any time to leave this area of the UPS property.

Under UPS's own access policy, IBT members not employed by it are entitled to access to open non-work areas of the facility--albeit exterior to the facility building itself--to engage in campaigning among UPS employees who are on non-work time. From that which occurred at the Riverside facility on October 14, 1991, it would appear that UPS considers the area where the coffee truck normally parks at that facility to be an open area, available for campaigning by IBT members not employed by UPS; supervisory employees of UPS were clearly aware that Mr. Mack was campaigning in that area but did not ask him to leave.

Accordingly, the Election Officer trusts and assumes that UPS will permit all IBT members, whether or not employed by it, access to that area of its Riverside facility to campaign among UPS employees who are on non-work time. To the extent that the Election Officer's assumptions are incorrect, the Election Officer would require that UPS permit any IBT member, whether or not employed by it, to campaign in that area of the Riverside facility. Article VIII, § 10(d) of the *Rules* requires that no restrictions be

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<sup>1</sup> Mr. Mack is the Secretary-Treasurer of Local Union 70 and is the President of Joint Council 7. Neither of these IBT affiliates are the collective bargaining representative of UPS employees at Riverside, California.

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placed upon members' pre-existing rights to campaign at the facility of an employer. Pre-existing rights include those established by prior practice. See Advisory Regarding Political Rights. UPS, by permitting Mr. Mack to campaign unmolested in the area of its Riverside facility described above, has established such pre-existing rights with respect to that facility.

The UPS access policy, however, clearly denies non-employees access to the interior of its facilities for campaign purposes. In addition, UPS limits campaigning by its employees to non-work areas during non-work times. Such policies, on their face, are not violative of the *Rules*. However, it is a violation of the *Rules* for an employer to permit access to the interior of its facility to a candidate or group of candidates and deny similar access to other candidates or groups of candidates. See, e.g., In Re: Faygo, 91-Elec. App-188 (SA). Because UPS permitted Mr. Mack's access to the interior of its facility it must afford other candidates a similar opportunity.

Since Mr. Mack is a member of a slate of candidates and because it appears that he was campaigning not only on his own behalf but on behalf of members of his slate, the principal of equal access would only require UPS to afford a similar campaign opportunity to the two slates opposing Mr. Mack and his slate. Moreover, since Mr. Mack only visited the Riverside facility on a single occasion, and was inside the terminal for no more than half an hour, the other slates should be permitted only a single opportunity to campaign inside the terminal for a period of half an hour.

However, the Election Officer finds that the access provided here must be made available to either a candidate for International office on the Ron Carey Slate and the Shea-Liguoris Action Team slate or a credentialed representative of any candidate on such slates. While the Election Officer has normally required for the type of violation found here that the employer only grant similar access to other nominated candidates for International office, see, e.g., In Re: Faygo, *supra*, the terms of the 1991 IBT International Union Election Plan require that the access be afforded to a credentialed representative in lieu of a candidate in this case. Ballots for the 1991 IBT International Election will be mailed on or about November 9, 1991. The campaign and travel schedules of nominated candidates have undoubtedly already been arranged. It might be difficult, if not impossible, for any nominated candidate on either the Ron Carey Slate or the Shea-Liguoris Action Team slate to personally visit the Riverside, California UPS facility prior to the time ballots are mailed. Accordingly, the access required here shall be available to either a candidate on each slate or a credentialed representative of such candidate or slate.

UPS shall permit a member, or credentialed representative, of the Ron Carey Slate and the Shea-Liguoris Action Team slate access to the interior of its terminal facility located at Riverside, California. The single visit for each site to the interior of the

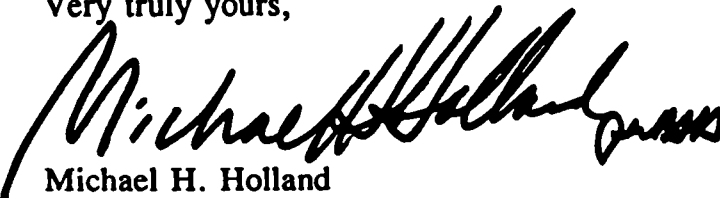
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facility shall be for no longer than half an hour and the candidate, or credentialed representative, may be accompanied by another IBT member. Candidates, or credentialed representatives, wishing such access to the interior of the terminal shall notify the terminal manager at Riverside 48 hours prior to the visit.

For the reasons articulated above with respect to the date on which the ballots for the 1991 IBT International Union Election will mailed, an appeal of the Election Officer's decision to the Independent Administrator shall not stay the remedy ordered by the Election Officer here. *Rules*, Article XI, § 2(z).

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

cc: Frederick B. Lacey, Independent Administrator

Geraldine Leshin, Regional Coordinator

Martin Wald, Esq. (By Facsimile and Overnight Mail)  
Schnader, Harrison, Segal & Lewis  
Suite 3600  
1600 Market Street  
Philadelphia, PA 19103  
(Fax: 215-751-2205)

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Eddie Burke (By Facsimile and Overnight Mail)  
c/o Ron Carey Campaign  
26 Bradford Street  
Main Front Door  
Charleston, WV 25301  
(Fax: 304-925-0273)

Walter Shea (By Facsimile and Overnight Mail)  
c/o James Smith  
c/o IBT Local Union 115  
2833 Cottman Avenue  
Philadelphia, PA 19149  
(Fax: 215-333-4146)



in Riverside, California. UPS acknowledges that Mr. Mack entered the facility with Ken Haarla, a Local 63 Business Agent who is permitted access to the facility under an inspection provision in the collective bargaining agreement. However, UPS asserts that its managers neither knew nor should have known that Mr. Mack was campaigning, that its managers only heard Mr. Mack discussing pension issues, and that, therefore it did not permit campaigning at its facility such that it must now afford a similar opportunity to the other candidates or their representatives.

Upon investigation, Mr. Mack admitted that he entered the Riverside facility between 7:00 and 7:30 a.m. on October 14, 1991, accompanied by Mr. Haarla. Mr. Mack was introduced to IBT members working in a dock area near a loading belt where he solicited support for himself and other candidates on the R.V. Durham slate. Although Mr. Mack was observed by UPS managers, they took no action to determine the purpose of his visit or to ask him to leave. Mr. Mack remained in the interior of the facility for about one half hour before leaving.<sup>1</sup> Mr. Haarla also left some campaign literature at the facility before departing with Mr. Mack.

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<sup>1</sup> Upon voluntarily leaving the work area, Mr. Mack continued to campaign outside by a coffee truck parked next to the dock area where UPS employees congregate on breaks. Here Mr. Mack was introduced to two UPS managers and here he was overheard discussing pension issues. At the hearing before me, the Election Officer and UPS agreed that UPS' policy permitted non employee IBT members to access non-work areas exterior to the facility for campaign purposes. Therefore Mr. Mack's was entitled to campaign next to the coffee truck and this part of his visit was not an issue on this appeal.



Based on the above facts, the Election Officer concluded that UPS had granted a right of access to one candidate and that, under the Election Rules, UPS was required to make that right "equally available on the same basis to all candidates and members." Election Rules, Article VIII, Section 10.d. Accordingly, the Election Officer directed that UPS permit a single one half hour visit to the interior of its Riverside facility by one candidate, or one credentialed representative of a candidate, from the Carey Partnership Slate and the Shea-Ligurotis Action Team. Under the terms of this remedy, each campaigner may be accompanied by one other IBT member of his choice and must give 48 hours notice of the visit to UPS.

At the hearing before me, I affirmed the Election officer's decision in all respects. While it is not my usual practice to issue decisions from the "bench," I was compelled to do so here because time is of the essence. With the balloting already begun, a delay of even a few days -- including here a holiday weekend -- could have rendered the remedy ineffective.

In affirming the decision, I note that UPS offered no evidence to suggest that Mr. Mack was not campaigning inside the facility as described above. Instead, UPS argues that it had no knowledge that Mr. Mack was campaigning and suggests that it was justified in permitting him in the work area because he was accompanied by a business agent who may have had a non-campaign purpose guaranteed by the collective bargaining agreement. The suggestion is that UPS believed that Mr. Mack also had a non-

campaign purpose. Thus, UPS does not believe it is appropriate to charge it with having established a right that it must now afford to the other candidates.


By contrast, the Election Officer asserts that UPS is well aware that a hotly disputed Union election is underway and that UPS has consistently enforced its strong policy against permitting non-employees to campaign in work areas. Accordingly, UPS may be fairly charged with the knowledge that it was establishing a right of access even if its managers did not know they were doing so under these circumstances. I agree with the Election Officer's conclusion. Charging UPS with responsibility for the opportunity it made available to Mr. Mack under these circumstances is not unreasonable and goes far to maintain a level playing field.

However, even assuming that UPS was justified in ignoring Mr. Mack's presence in the interior of its Riverside facility, the fact remains that it afforded one candidate the right to campaign on its premises and it now seeks to deny that same right to the other candidates. Notwithstanding an employer's knowledge or intentions, the Election Rules simply do not permit such an inequality. Thus, the goal of ensuring fair, honest and open elections would be frustrated by accepting the arguments advanced by UPS.

In sum, the Election Officer's findings are well grounded in the facts and are wholly supported by the letter as well as the intent of the Election Rules. The remedy directed by the Election Officer is a reasoned and balanced measure closely tailored to establishing a level playing field which is needed to ensure fair,

honest, and open elections. In requiring only a one-time right of access for the other two slates, in limiting the access to a period of one-half hour, and in requiring 48-hour notice, the Election Officer has minimized the intrusion onto UPS' property and has given great deference to UPS' privacy, and security interests.

For the foregoing reasons, and as stated in my "bench" decision, the Election Officer's decision is affirmed in all respects.

  
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Frederick B. Lacey  
Independent Administrator  
By: Stuart Alderoty, Designee

Dated: November 12, 1991

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

Plaintiff, :

-v- :

ORDER

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO, et al., :

Defendants. :

88 CIV. 4486 (DNE)

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EDELSTEIN, District Judge:

WHEREAS United Parcel Service ("UPS"), an employer of members of the International Brotherhood of Teamsters ("IBT"), has appealed six decisions of the Independent Administrator concerning protests filed under the Election Rules for the IBT International Union Delegate and Officer Election (the "Election Rules"); and

WHEREAS the Government argues that these appeals are moot; and

WHEREAS these six decisions affirmed decisions of the Election Officer finding that UPS had violated the Election Rules; and

WHEREAS all six decisions involved the rights of IBT members to campaign in connection with the recently completed International Union Officer Election; and

WHEREAS the remedies imposed were limited to the campaign period for International Union Officer Election, which ended on December 10, 1991 -- the date by which mail ballots had to be received by the Election Officer in order to be counted, see International Union Officer Election Plan, Art. II; and

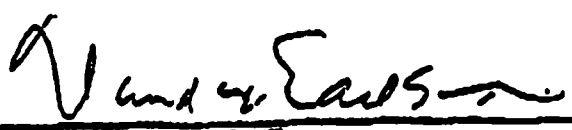
WHEREAS UPS could have timely appealed before the close of the campaign period, see Election Rules, Art. XI, §1(a)(8), but did not do so; and

WHEREAS these appeals, which challenge the imposition of remedies no longer in effect, are moot;

IT IS HEREBY ORDERED that UPS's appeals are dismissed as moot.

SO ORDERED.

Dated: December 20, 1991  
New York, New York

  
U.S.D.J.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :  
 :  
 Plaintiff, :

-v-

ORDER

88 CIV. 4486 (DNE)

INTERNATIONAL BROTHERHOOD OF :  
 TEAMSTERS, CHAUFFEURS, :  
 WAREHOUSEMEN AND HELPERS OF :  
 AMERICA, AFL-CIO, et al., :  
 :  
 Defendants. :

-----X

EDELSTEIN, District Judge:

United Parcel Service, Inc. ("UPS") has moved this Court pursuant to Local Civil Rule 3(j) for reargument of this Court's December 20, 1991 order, which dismissed as moot UPS's appeal from six decisions of the Independent Administrator. These decisions concerned the campaign rights of members of the International Brotherhood of Teamsters (the "IBT") in connection with the recently concluded International Union officer election.

Local Civil Rule 3(j) provides that a motion for reargument shall set forth concisely the "matters or controlling decisions which counsel believes the court has overlooked." This Court enunciated the standard governing motions to reargue as follows:

The strong interests in finality and the procedural directions of Local General Rule 9(m) [Rule 3(j)'s predecessor] lead this court to conclude that the only proper ground for a motion for reargument is that the court has overlooked "matters or controlling decisions" which, had they been considered, might reasonably have altered the result reached by the court.

United States v. International Business Machines Corp., 79 F.R.D.

412, 414 (S.D.N.Y. 1978). This has been adopted as the governing standard. See Morser v. AT&T Information Systems, 715 F. Supp. 516, 517 (S.D.N.Y. 1989); Adams v. United States, 686 F. Supp. 417, 418 (S.D.N.Y. 1988); Ashley Meadows Farm, Inc. v. American Horse Shows Ass'n, Inc., 624 F. Supp. 856, 857 (S.D.N.Y. 1985). This stringent standard is necessary to "dissuade repetitive arguments on issues that have already been considered fully by the court." Caleb & Co. v. E.I. DuPont de Nemours & Co., 624 F. Supp. 747, 748 (S.D.N.Y. 1985). A party moving under Rule 3(j) may not submit new facts, issues or arguments. See Travellers Ins. Co. v. Buffalo Reins. Co., 739 F. Supp. 209, 211 (S.D.N.Y. 1990).

All of the matters and controlling decisions proffered by UPS in this motion were considered by this Court in issuing its December 20, 1991 order. There is no actual controversy at this stage of appellate review. See Roe v. Wade, 410 U.S. 113, 125 (1973). UPS's appeals are therefore moot.

UPS has only itself to blame for not obtaining prompt judicial review of the Independent Administrator's decisions, the last of which was issued on November 14, 1991. If UPS had promptly appealed any of the Independent Administrator's decisions, it would have received a decision well before the close of the election campaign on December 10, 1991. However, UPS delayed until November 24, 1991 before filing an appeal, which this Court rejected as fatally vague on December 2, 1991. UPS did not file a proper appeal until December 6, 1991, four days before the close of the election campaign.

UPS next argues that the issues presented in the appeals are capable of repetition, yet evading review. UPS's argument that the issues presented in its appeals will recur is purely speculative. Even if the 1996 election is governed by the Election Officer, the election may be governed by a completely different set of rules. Further, even if the 1996 Election is governed by the Election Officer and the same rules apply, there is no reason that UPS would be unable to obtain judicial review at that time. See DeFunis v. Odegaard, 416 U.S. 312, 318-319 (1974) ("just because this particular case did not reach the Court until the eve of the petitioner's graduation from law school, it hardly follows that the issue he raises will further evade review"). Thus, while the issues decided against UPS in 1991 might be capable of repetition in 1996, there is no reason that the issues they present will evade review.

Finally, UPS argues that if this Court determines that UPS's appeals are moot, it should vacate the Independent Administrator's decisions as moot, rather than dismiss UPS's appeals as moot. While vacatur might have been appropriate had UPS diligently prosecuted its appeal, it did not do so. Instead, UPS "slept on its rights" and rendered its appeal moot by its own inaction. See United States v. Munsingwear, 340 U.S. 36, 41 (1950).

Accordingly, UPS's motion to reargue is denied in all respects.



SO ORDERED

DATED:

July 23, 1992  
New York, New York



U.S.D.J.