



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

February 5, 1991

VIA UPS OVERNIGHT

Shelley Jesses
5308 Cathy Drive
Montgomery, AL 36108

Don West
President
IBT Local Union 612
50 Bagby Drive
Birmingham, AL 35219

Ralph O'Neal
1512 Jade Street
Prattville, AL 36067

Montgomery Food Processors
4530 Mobile Highway
Montgomery, AL 36108

Re: Election Office Case No. P-183-LU612-SEC

Gentlemen:

A pre-election protest was filed by Mr. Shelley Jesses and Mr. Ralph O'Neal the facts of which alleges a violation of Article VIII, §10 (d) of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules"). The protest contends that on December 19, 1990 Mr. Jesses and Mr. O'Neal were campaigning in the parking lot of an employer of Local 612 members, Montgomery Foods Inc., and were ejected by security from the lot. Their campaign activity was leafletting of employee cars. Neither Mr. Jesses or Mr. O'Neal is an employee of Montgomery Food. Mr. O'Neal is a candidate for delegate to the IBT International Convention.

The Election Officer has investigated these facts as alleged in the protest and has found no dispute as to any essential facts. Montgomery Food, by Mr. Mike Smith, has advised the Election Officer that in a prior union election members of Local 612, regardless of their employment by Montgomery Food, were allowed to campaign in the parking lot of Montgomery Food including distributing literature in the lot and placing literature on cars. Mr. Smith further advised the Election Officer that when a security guard reported the leafletting activity on December 19, 1990 to management they instructed security to stop the activity and advise Mr. Jesses and Mr. O'Neal to leave.

Shelly Jesses
Page 2

the lot. Mr Smith also stated that this action was taken by management because during the campaign in 1986 the leafletting caused the parking lot to be littered and extra clean-up was necessary. Therefore, according to Mr. Smith, when management was advised of the leafletting by Mr. Jesses and Mr. O'Neal a decision was made to stop that activity.

Article VIII, §10 (d) of the *Rules* states that in pertinent part as follows:

"No restrictions shall be placed upon candidates' or members' pre-existing rights to use employer or Union bulletin boards for campaign publicity. Similarly, no restrictions shall be placed upon candidates' or members' pre-existing rights to solicit support, distribute leaflets or literature, conduct campaign rallies, hold fund raising events or engage in similar activities on employer or Union premises. Such facilities and opportunities shall be made equally available on the same basis to all candidates and members."

The Independent Administrator, in a January 23, 1991 decision, has determined in the matter known as McGinnis et al. and Local 710, Yellow Freight Systems No. 91 - Elec App - 43 that the above Rule is enforceable as to employer of IBT members such as Montgomery Food. As noted by the Independent Administrator, in that decision, this election is being conducted pursuant to an order by the United States District Court, United States v. International Brotherhood of Teamsters, 728 F Supp 1032 (S D.N.Y. 1990). In furtherance of that order the District Court, Judge Edelstein has approved the Rules including the Article and Section cited above. The Independent Administrator found that to effectuate these Rules and to fulfill the purpose and goal of the Consent Order the Election Officer has the authority to enforce a member's right to campaign on employer premises and that the Officers appointed under the Consent Order have the authority to exercise jurisdiction over employers of IBT members.

That being the case, the question remains as to whether the conduct of Montgomery Food violated the rights of members of Local 612. Although the delegate election with respect to Local 612 has been completed (on January 15, 1991), the election process mandated by the *Rules* will not be over until the certification of International Officers in late 1991 or early 1991. Therefore, this matter is not moot. There is a pre-existing practice of allowing non-employee members to campaign in the parking lot of Montgomery Food. Montgomery Food admits that during the last campaign with respect to Local Union officer elections, such campaigning was permitted. Regardless of whether these non-employees have other means of access in accordance with Article VIII, §10 of the *Rules* the employer cannot now change its practice in response to non-employee campaigning.

Further, even without the pre-existing practice the *Rules* would require access by non-employees such as the protestors. Referring again to the decision of the Independent Administrator cited above, the employer in that case sought to remove non-employee members from an open parking lot utilized by members of the public and employees. The Independent Administrator, using the "balancing test" as set forth by the National

Shelly Jesses
Page 3

Labor Relations Board in Jean Country 291 NLRB Lr. 4 (1988), found minimal property interest of the employer in this unsecured area. The parking lot of Montgomery Food is much the same, an unsecured lot to which the public has access. Thus the interest of the campaigning IBT members, a strong interest vital to the effective implementation of the *Rules*, outweighs the minimal property interests of Montgomery Food.

Based on the foregoing the protest is GRANTED. Pursuant to the authority under the *Rules*, Article XI, §2 which states in pertinent part as follows:

If as a result of any protest filed or any investigation undertaken by the Election Officer with or without a protest, the Election Officer determines that these Rules have been violated or that any other conduct has occurred which may prevent or has prevented a fair, honest and open election, the Election Officer may take whatever remedial action is appropriate.

The following remedial action is ordered. The Election Officer orders that Montgomery Food, Inc. sign the notice attached hereto and forward the same to the Local Union for posting on all bulletin boards at employer and Union facilities within the Local.

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/acm

cc Frederick B. Lacey, Independent Administrator
Donald H. Wilhams, Regional Coordinator

NOTICE TO TEAMSTER MEMBERS
FROM MONTGOMERY FOOD PROCESSORS

Montgomery Food recognizes the right of Union Members to participate in campaign activities on behalf of candidates for delegate and alternate delegate to the 1991 IBT International Convention

Montgomery Food recognizes the right of Union Members to participate in campaign activities on behalf of candidates for election in 1991 to International Office in the IBT

IBT members not employed by Montgomery Food have the right to engage in campaign activities on the premises of the Montgomery, Alabama facility in the employee parking lot.

Montgomery Food Processors, Inc.

IN RE:

SHELLEY JESSES, RALPH O'NEAL

and

MONTGOMERY FOOD PROCESSORS

and

IBT LOCAL UNION NO. 612

91 - Elec. App. 71 (8A)

DECISION OF THE
INDEPENDENT ADMINISTRATOR

This matter arises out of an appeal from a decision of the Election Officer in Case No. [REDACTED] regarding the refusal of an employer, Montgomery Food Process ("Montgomery") to allow IBT members to distribute leaflets in the employee parking lot on Montgomery's premises. A hearing was conducted before me on February 13, 1991, via teleconference were the following persons: J. Michael Smith, a Vice President at Montgomery; John Sullivan, on behalf of the Election Office; Donald Williams, the Regional Coordinator; and Delores Hall, the Adjunct Regional Coordinator.

The summary of the Election Officer is complete and a copy of it is annexed hereto as Exhibit A. While I shall refer to certain portions of that Summary, all of it is incorporated herein by reference.

Shelley Jesses and Ralph O'Neal, members of IBT Local Union 612, but not employees of Montgomery, objected to the latter's refusal to allow IBT members to engage in campaign activity in the employee parking lot when, according to the Election Officer, that

activity was permitted prior to this election. According to the Election Officer Summary, Montgomery, through its representative, Mr. Smith, admitted that members of Local 612, that were not employed by it, were previously allowed to distribute campaign material and otherwise engage in campaign activities in the employee parking lot in the last previous Local Union Officer election in 1986. It is also reported by the Election Officer in his Summary that Mr. Smith admitted that security personnel ejected the two protestors (Jesses and O'Neal) from the parking lot for engaging in that same activity in December 1990. Mr. Smith contended that the policy change came about because of the additional clean-up cost associated with the littering that occurred as a result of the campaigning during the 1986 election.

It is not disputed that Mr. O'Neal is a candidate for delegate to the IBT Convention in 1991 and that on December 19, 1990, he and Jesses were putting leaflets on employee cars on behalf of Mr. O'Neal's candidacy in the Montgomery parking lot. They were told by Montgomery's security personnel to leave the premises.

It appears that the portion of the parking lot in question (the upper portion)¹ is not secured and is unfenced and accessible to the public from an adjoining highway.

¹ The parking lot is divided into two sections, the upper section is separated from the lower section by a security gate. Access to the upper section is unrestricted. The upper section adjoins a four lane highway. The activity in question here, as well as the activity that took place in 1986, occurred in the upper section of the parking lot.

As I have indicated, Montgomery said that it was prohibiting the campaign activity in this election because of the extra clean-up cost associated with the littering that occurs in connection with this type of campaigning. It also is undisputed that Jesses and other IBT members campaigned and distributed literature in the parking lot in the election for Local Union officers in 1986 and there was no objection to their doing so at that time.

The Election Rules, Article VIII, Section 10(d) governing campaign activity, specify that no restrictions shall be placed on the pre-existing rights of IBT members to engage in campaign activities on employer premises. Additionally, in an "Advisory Regarding Political Rights" issued on December 28, 1990, the Election Officer stated that IBT members retained all pre-existing rights to campaign in non-work areas of the employers premises during non-work time. Thus, they enjoy not only all rights made available through substantive federal law, but also those provided by past practice. The Advisory further said that the rights embodied therein would be construed "as a floor, not a ceiling, of the rights afforded under Article VIII, Section 10(d)." Election Officer Summary, Para. 8. It is undisputed that there was the pre-existing practice² and, as the Election Officer found, that pre-existing practice cannot be abandoned or discarded for purposes of this election.

² Mr. Smith contends that since 1986, no person or entity has been permitted to distribute literature in the parking lot. The fact remains, however, that in the last Local Union election such activity was permitted.

Returning to the question of jurisdiction over employers of IBT members engaged in the election process, this issue has previously arisen. In In Re: Robert McGinnis and IBT Local Union 710, Yellow Freight Systems, Inc., 91 - Elec. App. - 43 (January 23, 1991), the Independent Administrator stated that employers:

[H]ave the power, if not restrained, to subvert the electoral process and thereby eviscerate the most critical provisions of the Consent Order by preventing IBT members from exercising their right to campaign for delegate or officer candidates.

For the convenience of the participants, I am annexing a copy of that opinion as Exhibit B. Accordingly, the Independent Administrator found in Yellow Freight that the Election Rules properly provide the jurisdiction over employers in order to enforce the Consent Order.

As in Yellow Freight, I hold that there is jurisdiction by the Court Officers over Montgomery Food in this case to the extent necessary to enforce the Consent Order and the Election Rules that are promulgated thereunder.

This case differs from Yellow Freight in this respect: here there was a pre-existing exercise of campaign rights on Montgomery's property that was permitted. Thus, I need not go through the balancing process in order to determine whether the non-employees have other means of access to the employees. Nonetheless, I shall address that issue since it was addressed by the Election Officer.


I agree with the Election Officer that Montgomery's property interest in an unsecured lot to which the public has access appears

"minimal." Election Officer Summary, Para. 13. I do not regard the burden of cleaning up the extra littering from passing out leaflets to be particularly burdensome. To the extent it is a burden, it is slight when compared with the substantial rights of the IBT members to exercise their right to campaign and to reach their fellow members with their campaign messages. Such a right is critical, in fact it is crucial to enforcement of the Consent Order.

Accordingly, the members' interest in the campaign process outweighs the countervailing property interest of Montgomery in this case.

For the foregoing reasons, the Election Officer's granting of the protest, and entry of a remedial order against Montgomery, is affirmed.

The remedial notice directed by the Election Officer is also approved by me and Montgomery is directed to sign the notice as prepared by the Election Officer and forward it to the Local Union for posting at Montgomery Food and Union facilities. This is to be done within ten (10) days and Mr. Smith or some other responsible person of Montgomery is to notify the Election Officer by way of affidavit that this has been done.



Frederick B. Lacey
Independent Administrator
By: Stuart Alderoty

Dated: February 14, 1991.