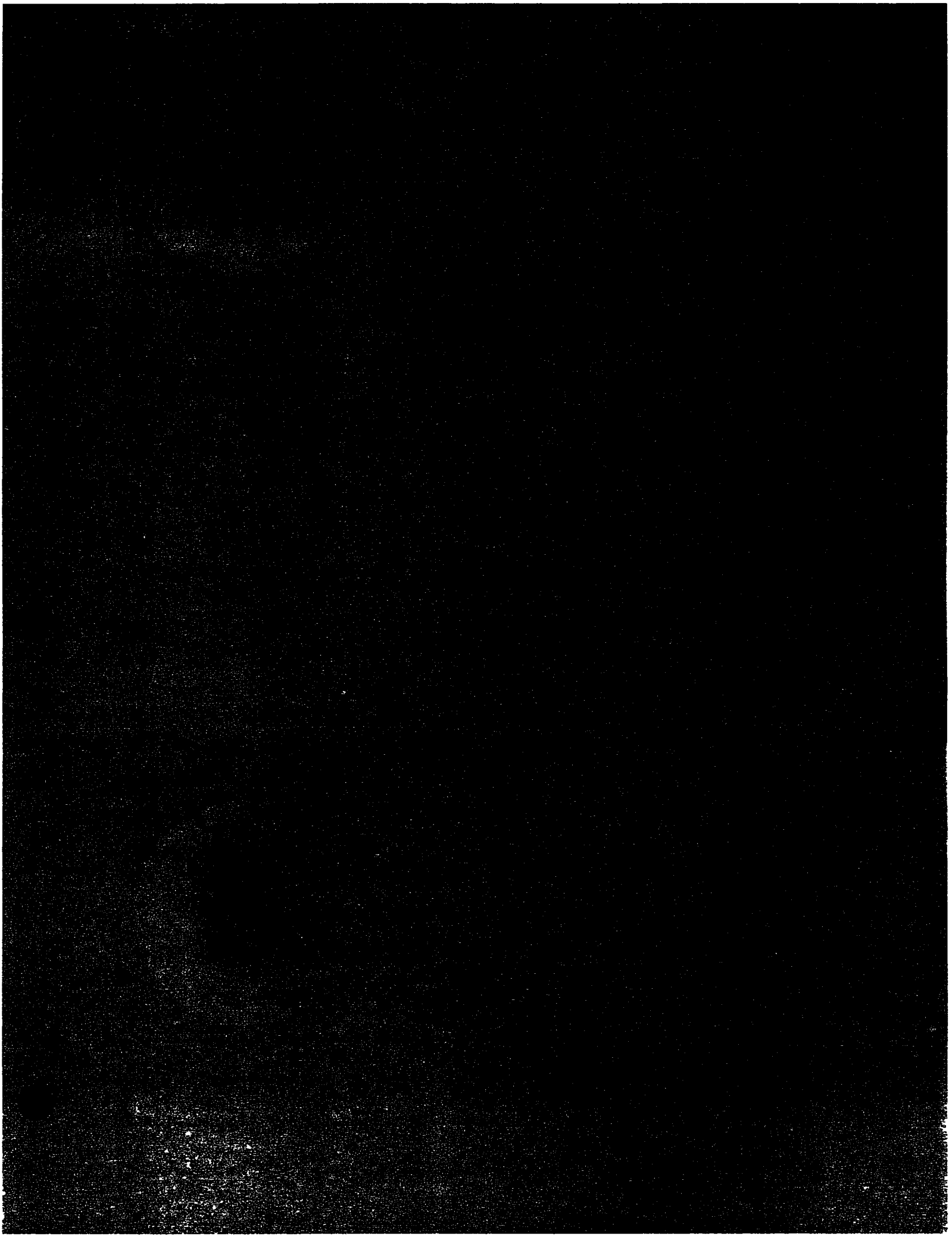

FICE OF THE ELECTION OFFICER
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25 Louisiana Avenue, NW
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Michael H Holland
Election Officer

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343 South Dearborn Street
Chicago, IL 60604
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January 30, 1991

VIA UPS OVERNIGHT

Michael J Veneziano, Jr.
247 Newton Street
Kensington, CT 06037

Thomas Robidoux
Secretary-Treasurer
IBT Local Union 671
9 Signor Street
E Hartford, CT 06108

Chris Martin
Feeder Manager
UPS
90 Locust Street
Hartford, CT 06114

Re: Election Office Case No. P-309-LU671-ENG

Gentlemen

A pre-election protest has been filed pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") The complainant, Michael J. Veneziano, has filed protests regarding the lack of bulletin boards at his work site and regarding his Employer's restrictions on this right to wear campaign buttons

Mr Veneziano works for United Parcel Service in Hartford, Connecticut. He states that he is a UPS feeder driver, which basically means that he moves trailers between various UPS properties during this work day. Mr. Veneziano states that he is supporting candidate Ron Carey for IBT President.

With respect to bulletin boards, Mr Veneziano alleges that the all-purpose bulletin board in his feeder shack has been removed and replaced with an official company board and an official union board. He protests his lack of access to the official union board

Mr. Veneziano provided no evidence that the official union bulletin board has been used for postings other than, or in addition to, official management company and Union notices Article VIII, §10 (d) of the *Rules* provides no restrictions shall be placed upon candidates' or members' pre-existing right to use employer or Union bulletin

boards. Further, even where a bulletin board has not previously been used for posting of campaign materials but has been used for postings other than or in addition to official company and union notices, campaign materials may be posted. Advisory Regarding Political Rights. Here, however, there is no evidence that the bulletin has ever been used for general purpose posting. Thus the *Rules* do not require that such facilities be made available for campaign material postings. Accordingly, this portion of the protest is DENIED.

With respect to the issue of campaign buttons, Mr. Veneziano states that he has been told that he could not wear a Carey button on his UPS jacket at the work site. In June, 1990 he was told by Chris Martin, the Hartford feeder manager, that he could not wear his Ron Carey campaign button on his uniform, which he had been doing. He complied with this directive, but continued to wear the button on his uniform on the way to and when leaving the work site.

On July 7, 1990 at the feeder shack awaiting the start of his shift and in the presence of other drivers, the feeder manager, Ron Sullivan told him to take the buttons off his jacket. Complainant stated that he told Sullivan that was not yet "on the clock." Sullivan told him he was on UPS property and that buttons must come off. Complainant complied.

Complainant asserts, however, that UPS has thus violated his rights under Article VIII, §10 of the *Rules*. Investigation reveals that UPS in the New England region, unlike other regions, drivers are allowed to wear their uniforms to work. UPS asserts that it has a rule that once on UPS property uniformed employees may not wear buttons. Regional UPS labor relations officials acknowledge, however, that such employees may wear buttons until their shift starts.

It has generally been held by the Courts and the National Labor Relations Board that employers that require employees to wear uniforms and do not allow employees to wear distinguishing pendants, jewelry or buttons may prohibit employees from wearing union buttons when in uniform and in potential contact with the public, provided such a rule was adopted and is enforced in a uniform non-discriminatory manner. Further, the election *Rules* on campaigning (Article VIII, §10), while not directly addressing this question, are based on equal access or use of pre-existing rights to use facilities or engage in campaign activities on employer premises. Here, there is no finding that the dress code in question was adopted or applied in a discriminatory fashion. It should be noted that the company does not restrict the wearing of such buttons prior to or after the member leaves the work site. This leaves the question of members, who wear UPS uniforms, on work time, prior to the time that members may come into contact with the public The right of employees to wear such buttons is based on their rights under the Labor Management Reporting and Disclosure Act and the National Labor Relations Board. The right of the employer to prohibit such buttons is based on the employer's right to project the image its desired image to its public. No case has come to the attention of the Election Officer which held that the wearing of buttons by employees not

in uniform or not at least potentially in contact with the public, whether or not in uniform, could be prohibited.

Given that the *Rules* at Article VIII, §10 give members the right to campaign activities "incidental to work," and that no harm would be done to the employers' right to project its desired image to the public, this protest is GRANTED only to the extent that IBT members, even in uniform, have the right to wear campaign buttons while at the feeder barn or shack, but the company is allowed to enforce its no-button rule once the member leave the facility, is driving on public streets or is otherwise in contact or potentially may have contact with the public.

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
Elizabeth A Rodgers, Regional Coordinator
Martin Wald, Esq

11-62

IN RE: MICHAEL J. VENEZIANO, JR. COMPLAINANT, and THOMAS ROBIDOUX, Secretary-Treasurer, IBT LOCAL UNION NO. 671, and CHRIS MARTIN, Feeder Manager UNITED PARCEL SERVICE RESPONDENTS.	91 - Elec. App. - 62 (SA) DECISION OF THE INDEPENDENT ADMINISTRATOR

This matter arises out of an appeal filed by United Parcel Service ("UPS") from a January 30, 1991, decision of the Election Officer in Case No. [redacted] A hearing was held before me on February 6, 1991, by way of teleconference at which the following persons were heard: Barbara Hillman and John Sullivan, on behalf of the Election Officer; and Nick Price, on behalf of UPS. Henry Murray, the Adjunct Regional Coordinator, audited the hearing.

The underlying protest, filed by Michael J. Veneziano, a UPS employee and a member of IBT Local Union 671,[1] involved several issues. The only issue disputed by UPS on this appeal is a narrow one: whether an employer, who allows employees to wear campaign buttons on their uniforms while they are going to and from work but does not allow employees to wear union buttons while they are on duty, can prohibit an employee from wearing a union campaign button during the small window period when he is on company property, has "punched in," but has yet to begin work.[2]

The Complainant contended that UPS violated his right to exercise his political rights (rights he argued which are safeguarded by the Rules For The IBT International Union Delegate And Office Election (the "Election Rules"), Article VIII, Section 10), by ordering him not to wear a campaign button[3] while he is in uniform on company property, regardless of whether he has actually started to work.

UPS objects to any exercise of jurisdiction over it by the Election Officer or the Independent Administrator and defends its no-button rule as well established by prior past practice and

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[1] Although given the opportunity, Mr. Veneziano did not make himself available at the hearing.

[2] Although the Election Officer's January 30, 1991, decision can be interpreted as addressing the broader issue of the right of a UPS employee to wear campaign buttons while on company property, regardless of whether his shift has started, it is clear that the issue is, in fact, more narrowly drawn.

[3] The Complainant's button supported the candidacy of Ron Carey for International General President.

consistent with precedent of the National Labor Relations Board ("NLRB"). UPS contends that rule is required to forestall conflict among employees and necessary to preserve the neutrality of the employer and the purity of the uniform and the company's image in the public's eye. UPS also contends that the NLRB "is fully able to protect its own jurisdiction and interpret and enforce the law." It is further argued that the jurisdiction of the NLRB preempts action on the part of the Election Officer and the Independent Administrator in regards to the Complainant's claim.

As for UPS's jurisdictional challenges, these very same challenges were recently analyzed and resolved in a January 23, 1991, decision of the Independent Administrator in the matters of McGinnis, et al. v. Yellow Freight Systems, Inc., et al. and Hewer v. Yellow Freight Systems, Inc., et al., 91 - Elec. App. - 43. In the Yellow Freight matters, Yellow Freight argued that the Election Officer and the Independent Administrator lacked jurisdiction over it because, as an employer, it was not a party to the underlying civil RICO litigation or the Consent Order. In addition, Yellow Freight raised the NLRB preemption argument. UPS's position is identical to the position taken by Yellow Freight.

In rejecting Yellow Freight's jurisdictional defenses, the Independent Administrator stated:

> Yellow Freight's jurisdictional challenges, if successful, would strike at the heart of the effective enforcement of the Election Rules. If the Court-appointed officers do not have the power to prevent

employers from frustrating an IBT member's exercise of the right to campaign for delegate or officer candidates, the Election Rules will have little meaning.

Yellow Freight, and other similarly situated employers, have 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. The Consent Order provides for the first secret ballot, one-person-one vote rank and file election ever conducted in the IBT. However, unless IBT members obtain true access to their fellow members for purposes of campaigning, the election process contemplated in the Consent Order will not be achieved. Since incumbent union officers have far greater name recognition than members of the rank and file, and often will have virtually unlimited access to IBT members at the members' job sites because of their status as union representatives, candidates who are not in office must often have access to work sites for campaign purposes if the playing field of the election process is not to be tilted toward the incumbent.

* * *

Enforcement of these [Election] [R]ules requires jurisdiction over employers such as Yellow Freight.

* * *

Judge Edelstein, pursuant to his authority under the Consent Order and the broad powers Congress gave the district courts to fashion remedial measures under the civil RICO statute, 18 U.S.C. § 1964(a), has approved the Election Rules (as amended), which include the pre-existing right of a non-employee union member to engage in campaign activities on an employer's premises subject to the foregoing balancing test. I find that in order to effectuate the Election Rules "so ordered" by Judge Edelstein and to fulfill the purpose and goals of the Consent Order, the Election Officer and the Independent Administrator have the authority to enforce, in accordance with "pre-existing" law, a member's right to engage in campaign activity on employer premises.

* * *

> The implementation of the Consent Order, and its mandate for fair, honest and open elections, is vulnerable to frustration or disruption by employers like Yellow Freight. If the Consent Order is to have meaning, the Court-appointed officers must have the power to exercise jurisdiction over Yellow Freight and I conclude that we do.
> [Yellow Freight, supra, pp. 4-10.]

This same analysis is fully applicable here. UPS's attempt to distinguish the facts of its case lacks merit. UPS suggests that its "no-button" rule as applied here will not serve to frustrate the Consent Order or the Election Rules, given that employees have many alternative means of campaigning and exercising their political rights. As discussed in greater detail later on, the Complainant here had a pre-existing right, protected under the Election Rules, to wear his campaign button under the circumstances presented. UPS curtailed that right and, in doing so, it frustrated the Election Rules. That UPS employees may exercise other means of campaigning is of no relevance here[4] -- any frustration of the Election Rules places the Consent Order, and its

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[4] In Yellow Freight, the issue presented was whether non-employees of Yellow Freight could campaign on Yellow Freight's property. It was determined that non-employees had a limited right to engage in campaign activity on an employer's premises. That right of access depends upon the balancing of the strength of the union member's right to engage in the conduct in question, the strength of the employer's property right and the availability of a reasonable alternative means of communication. As discussed in greater detail later on in this decision, the right of the Complainant to wear a campaign button under the circumstances presented is a secure one, not subject to any such balancing test. Thus, whether the Complainant had "a reasonable alternative means of communication simply does not factor into the equation.

mandate for fair, honest and open elections in jeopardy and cannot be tolerated.

In dismissing Yellow Freight's preemption defense, the Independent Administrator found:

> The comprehensive remedy embodied in the Consent Order and the Election Rules was approved by Judge Edelstein pursuant to the United States District Court's broad remedial powers in RICO actions. 18 U.S.C. § 1964(a). Even if the conduct complained of here amounted to an unfair labor practice under the NLRA, it is first and foremost a violation of the Election Rules, and is, therefore, subject to the Consent Order's enforcement provisions. By enforcing the Election Rules in this case, the Election Officer and the Independent Administrator, as Court-appointed officers, are merely carrying out the United States District Court's power to enforce its own Consent Order.
>
> Because the protection of a union member's right to engage in campaign activity at the work place is crucial to both the effective implementation of the Election Rules and to the enforcement of the Consent Order, I find that Congress' grant of federal jurisdiction for the enforcement of this civil RICO Consent Order overrides any concurrent NLRB jurisdiction. Therefore, I find that the Election Officer and the Independent Administrator have the authority to decide and enforce the Election Rules in this case.
> [Yellow Freight, supra, pp. 11-12.]

Once again, this analysis is true to this case.

Having dismissed UPS's jurisdiction and preemption claims, I will now address the merits of the underlying dispute. The Election Officer, in his Summary at p. 5, sets forth the controlling law:

> Employees generally have a right to wear union buttons or other insignia at work as protected expression unless there are "special circumstances" concerning safety or production that override the employees' right. Republic Aviation Corp. v. NLRB, 324 U.S. 793 at 802 n.7 (1945) (quoting NLRB's position that "[t]he right of

employees to wear union insignia at work has long been recoginzed as a reasonable and legitimate form of union activity, and the respondent's curtailment of that right is clearly violative of the [National Labor Relations] Act").

Accordingly, employers are generally not allowed to prohibit union buttons that are "small, neat and inconspicuous."[5] E.g., Floridian Hotel of Tampa, 127 NLRB 1484 (1962), enf'd as modified, 318 F.2d 545 5th Cir. 1963).

Countervailing "special circumstances" may exist where employees come into contact with the public and the employer's public image may be affected. E.g., Burger King Corp. v. NLRB, 725 F.2d 1053 (6th Cir. 1984).

Article VIII, Section 10.d. of the Election Rules prohibits restrictions on the "pre-existing rights" of IBT members to solicit support or engage in similar campaign activities on employer premises. Pre-existing rights may take two forms. First, the past practice of an employer or the Local Union may create a "pre-existing right." Second, as is the case here, all rights made available through sustantive federal law are considered "pre-existing rights." See Election Officer Advisory Regarding Political Rights, December 28, 1990. Thus, in the absence of countervailing "special circumstances," the Complainant here had the "pre-existing" right to wear his campaign button on UPS's property under the facts presented. UPS argues that such "special circumstances" do exist here. In considering this argument, a more detailed review of the facts is necessary.

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5 No suggestion was made that the button in question here was anything but "small, neat and inconspicuous."

The Complainant is a "feeder driver" for UPS. This means that he drives a UPS truck between UPS warehouses carrying packages to and from. He does not make deliveries to the public. When he arrives at work, he "punches in," and remains in the "feeder shack" until he begins driving his first route. This is usually a twenty minute period, from about 8:20 a.m. to 8:40 a.m.[6] The "feeder shack" is not accessible to the area where the public would pick up packages.

UPS argues that the Complainant may be exposed to public tours making their way through the UPS facility, thus it suggests the Complainant may indeed be exposed to the public while wearing his button. The fact that the chance exists that the Complainant may be exposed to a public while travelling through the UPS facility, does not create a "special circumstance" which would warrant the infringement of the Complainant's right to wear his button. A "special circumstance" exists when an employee, wearing an authorized uniform will, in fact, have contact with the public, such as a counter-person at a fast-food restaurant. See Burger King Corp. v. NLRB, 725 F.2d 1053, 1055 (1984). Moreover, UPS allows buttons to be worn by employees, on their uniforms, while they travel to and from work. Given this, it would seem that there is a greater chance that the public will see a campaign button on

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[6] A short period of time may also elapse between the time the Complainant arrives at the "feeder shack" and actually "punches in."

a uniformed employee under those circumstances, rather than while a tour is circulating through the premises. In addition, the non-uniformed "inside" employees in the unloading/sorting area are permitted to wear buttons. Thus, it is more likely that the buttons worn by the "inside" employees would be seen by public [illegible] rather than a button worn by a driver waiting in the loader shack for twenty-minutes.

Accordingly, the Election officer's decision is affirmed in all respects.

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

Date: February 8, 1991.