



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

March 22, 1991

VIA UPS OVERNIGHT

Louis Bettencourt
622 Tramway Drive
Milpitas, California 95035

Jim O'Bra
Fleming Companies, Inc
Montague Expressway
Milpitas, California 95035

Mario Gullo
Secretary-Treasurer
IBT Local Union 287
1452 North 4th Street
San Jose, California 95112

Re: Election Office Case No. P-674-LU287-CSF

Gentlemen

A pre-election protest was timely filed pursuant to Article XI, Section 1 of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") In his protest, Louis Bettencourt alleges that Fleming Companies, Inc has instituted a policy restricting campaign access to IBT members in violation of the *Rules*

The investigation discloses the following Bettencourt is a shop steward at Fleming and a candidate for delegate Ray Corrie is the business agent of the Local responsible for servicing Fleming and a candidate for delegate on a slate other than Bettencourt's slate Prior to March 13, 1991, Bettencourt and his supporters had been permitted to campaign in non-work areas on non-work time IBT members who are not employed by Fleming had been permitted to campaign in the parking lot and in the drivers' break room Corrie and Bettencourt had agreed that in order that Fleming employees would have information on all candidates, that literature from all the slates and independent candidates would be posted on the Union bulletin board Such material was posted during the week of March 11, 1991 On March 15, 1991, Fleming management removed all of the campaign literature from the bulletin board¹

¹This issue is currently before the grievance panel of the employer and the Union The Election Officer has no evidence that the bulletin board at Fleming is a general purpose bulletin board Thus, it was not a violation of the *Rules* to prohibit campaign

On March 13, 1991, Jim O'Bra, the human resources manager, mailed a letter to Ray Corrie, informing him that "our policy with respect to internal Union affairs, elections, campaigns, etc is that the Fleming Food Company is not involved in any way We do not allow anyone to campaign, post campaign information, or distribute campaign literature on company property at any time Anyone attempting to enter the premises, who does not have business with the company, will not be permitted access to the facility "

Upon receipt of the letter, Bettencourt ceased his campaign activity and filed this protest Subsequently, on or about March 18, 1991, Bettencourt showed O'Bra a copy of his protest, at which point, O'Bra stated that he intended his letter to apply only to IBT members not employed by Fleming Bettencourt then recommenced campaign activity²

While the March 13, 1991 letter may have only been meant to apply to IBT members not employed by Fleming, the words of the letter were not so directed The letter had a chilling effect on members' rights, Bettencourt stopped his campaign activities To dispel the chilling effect and to clarify IBT members' campaign access rights at Fleming, the Election Officer directs Fleming to post the attached notice Further, Fleming shall file an affidavit with the Election Officer fourteen days from its receipt of this decision indicating its compliance with the posting requirements

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)

posting

² There has been no protest filed by any IBT member not employed by Fleming concerning Fleming's access policy as expressed in the March 13, 1991 letter However, the *Rules* do provide that IBT members who are employed by a different employer have certain rights to have reasonable access to the targets of their campaign activities Where the location of the employer's facility prevents face to face contact with the IBT members who work there, members can campaign in non-work areas outside the plant The Election Officer notes that the Fleming Facility is located on a heavily travelled street There is an unfenced parking lot outside the facility There are no sidewalks bordering the parking lot, or the entrance gate, where IBT members could safely distribute literature Under these circumstances IBT members not employed by Fleming would be permitted campaign access to the parking lot However, no such protest has been filed

NOTICE TO TEAMSTER MEMBERS


FROM MICHAEL H. HOLLAND, ELECTION OFFICER, IBT

You have the right to participate in campaign activities on behalf of candidates for delegate and alternate delegate to the 1991 IBT International Convention

You have the right to participate in campaign activities on behalf of candidates for International Office in the IBT

You have the right to engage in such campaign activities on the employer's premises during non work time You have the right to distribute campaign literature in non-work areas during non-work time

Your fellow members of the IBT, who work at other facilities or who are employed by other employers, have the right to engage in campaign activities on the employer's premises in non-work areas outside of terminal facilities, e g in the open, unfenced employee parking lot


MICHAEL H. HOLLAND
Election Officer, IBT

This is an official notice and must remain posted for thirty consecutive days form the day of posting, and must not be altered, defaced, or covered by any other material

W 287

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Washington, DC 20001

Michael H. Holland
Election Officer

(202) 624 8778
1-800-828-6496
Fax (202) 624-8792


NOTICE TO TEAMSTER MEMBERS
FROM MICHAEL H. HOLLAND, ELECTION OFFICER, IBT

You have the right to participate in campaign activities on behalf of candidates for delegate and alternate delegate to the 1991 IBT Convention

You have the right to participate in campaign activities on behalf of candidates for International Office in the IBT

You have the right to engage in such campaign activities on the employer's premises during non-work time. You have the right to distribute campaign literature in non-work areas during non-work time

Your fellow members of the IBT, who work at other facilities or who are employed by other employers, have the right to engage in campaign activities on the employer's premises in non-work areas outside of terminal facilities, e.g. in the open, unfenced employee parking lot



MICHAEL H. HOLLAND
Election Officer, IBT

This notice relates solely to the 1991 International Union delegate and officer election and to campaign activities with respect to that election. It does not relate to any other matter.

This is an official notice and must remain posted for thirty consecutive days from the day of posting, and must not be altered, defaced, or covered by any other material

IN RE.

LOUIS BETTENCOURT,

Complainant,

and

FLEMING COMPANIES, INC.,

and

IBT LOCAL UNION NO. 287,

Respondents.

91 - Elec. App. - 113 (SA)

DECISION OF THE
INDEPENDENT ADMINISTRATOR

This matter arises out of an appeal from a March 22, 1991, decision of the Election Officer in Case No. [REDACTED]. The appeal was filed by Chris Millsap, Director of Human Resources at Fleming Companies, Inc. ("Fleming"). A hearing was held before me by way of telephone conference on March 29, 1991, at which the following persons were heard: John J. Sullivan, on behalf of the Election Officer; Don Twohey, the Regional Coordinator; Mario Gullo, on behalf of Local 287; and the complainant, Louis Bettencourt.

Moments before the hearing was to begin, I received a facsimile transmission from Mr. Millsap dated March 28, 1991. In his transmission, Mr. Millsap indicated that it is his responsibility to represent Fleming at the hearing and it would be "physically impossible for [him] to attend the hearing in New Jersey"

In addition, Mr. Millsap complained that the Notice of Hearing was "too short to transfer that responsibility to another individual." Mr. Millsap also suggested that an in-person inspection of the Fleming site was necessary to resolve the appeal. Thus, he suggested that the hearing be held in Milpitas, California.

Lastly, Mr. Millsap suggested that the time limitations set forth in the Rules For The IBT International Union Delegate And Officer Election (the "Election Rules") be relaxed in this instance.

I will address each of these contentions in order.

First, it was not necessary for Mr. Millsap to be personally present in Newark, New Jersey, for the hearing. In fact, the Notice of Hearing is explicit in this regard. The Notice provides:

It is not necessary that you and the other parties be present in Newark, as a telephone link can be made with all parties. If you wish to be heard via telephone link, please furnish me with your telephone number prior to the hearing. If any party desires to make a written submission prior to the hearing, such submission should be served on all other parties.

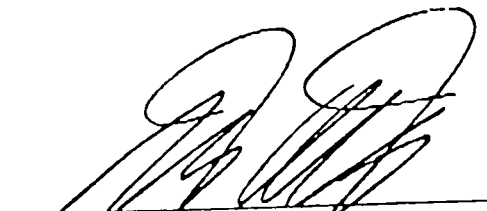
Second, if Mr. Millsap decided to take sole responsibility for the handling of the appeal, he should have made himself available for the hearing. He cannot rely on his own scheduling conflicts to avoid the hearing.

Third, it was not necessary that the hearing be held in Milpitas. In the past, when parties were interested in describing the physical layout of a facility, they have availed themselves of obvious options, such as submitting photographs and diagrams. In

addition, the Regional Coordinator, Mr. Twohey, personally inspected the Fleming site and was capable of providing an accurate description. Still further, the complainant, Mr. Bettencourt, is an employee of Fleming and is fully familiar with the site. Lastly, Mr. Millsap could have made available another representative of Fleming, who was familiar with the site, to participate in the telephone conference if it was his desire to describe the facility.

Fourth, the Election Rules provide for short time limitations for the completion of election appeal hearings, so that the delegate elections can be completed without undue delay. While there may be instances of good cause to relax the Rules, Mr. Millsap's personal schedule does not constitute such good cause.

The Election Officer's Summary is attached hereto. The decision of the Election Officer is affirmed for the reasons expressed in his Summary. I will leave the record open for a period of twenty-four hours to afford Fleming the opportunity to make a written submission. If Fleming elects to provide a written submission, I will review the same. If, after reviewing the submission, I determine that the matter should be reopened, I will notify all the parties.


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

Dated: April 1, 1991