

OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
25 Louisiana Avenue, NW
Washington, DC 20001

Michael H. Holland
Election Officer

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

August 14, 1991

VIA UPS OVERNIGHT

Robert Naslanic
441 Clair
Garden City, MI 48135

Lawrence Brennan
President
IBT Local Union 337
2801 Trumbull Avenue
Detroit, MI 48216

Foodland
Attn. Dennis Keller
12701 Middlebelt Rd.
Livonia, MI 48150

Re: Election Office Case No. P-833-LU337-MGN

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Robert Naslanic, a member of Local Union 243 of the IBT. Mr. Naslanic alleges that on July 29, 1991, he was attempting to distribute campaign literature for Ron Carey at the Foodland facility in Livonia, Michigan. Mr. Naslanic further alleges that he was asked to leave by a security guard and, after discussion with the Human Resources Manager, Mr. Dennis Keller, was then escorted off the premises.

Mr. Naslanic is not an employee of Foodland. He is also not a member of Local 337, the Local which represents the Foodland employees and the Local to which the Foodland employees belong. However, he is a member of the IBT and has attempted to campaign among the Local 337 members employed at Foodland with respect to the IBT International Union officer election. Foodland employs several hundred members of IBT Local 337.

Union members have a right protected by the National Labor Relations Act, and thus by Article VIII, § 10(d) of the *Rules*, to engage in communications, solicitations and the like with respect to intra-union affairs including intra-union elections. District

Lodge 91, International Association of Machinists v. NLRB, 814 F.2d 876 (2nd Cir., 1987); NLRB v. Methodist Hospitals Gary, Inc., 732 F.2d 43 (7th Cir., 1984); ABF Freight System v. NLRB, 673 F.2d 229 (8th Cir., 1982). The right to engage in such communications includes the right to access to an employer's property, under certain circumstances, by labor union members who are or not employees of that employer.

Where denial of all access to the property of an employer would prevent effective communications with such employer's employees by members not so employed, the employer's private property rights must accommodate the right to engage in such communication-type activities. Jean Country, 291 NLRB No. 4 (1988). Since the substantive federal right to engage in communication and solicitation includes the right to engage in such communication and solicitations with respect to intra-union election activities, the employer's rights to private property must accommodate the right to engage in such campaign activities. Since the right is an existing right under substantive federal law, it is protected under Article VIII, § 10(d) of the *Rules*.

Property that is purely public cannot be controlled by the employer, who cannot interfere with protected activity including campaigning activities on such property. Lechmere v. NLRB, 914 F.2d 313 (1st Cir., 1990). An employer's rights with respect to property which is technically private, but open to the public, such as shopping malls, access roads and parking lots, are normally insufficient to overrule the right of access by non-employees. Where the employer has traditionally permitted non-employees to engage in solicitation, even if other than union solicitation, on its property, such practices demonstrate that the private property interest is insufficient to override access rights for union activities, including intra-union election activities, and access to union members other than employees must be afforded. Even where the employer has restricted its property to access by its employees only, such rights cannot outweigh the rights of non-employees to have access to the property if no effective alternative means of communication exist. Lechmere v. NLRB, supra; Trident Seafoods Corp., 293 NLRB 125 (1989). The alternate means must be reasonable, not overly costly or time-consuming and must generally permit face-to-face communications. National Maritime Union v. NLRB, 867 F.2d 767 (2nd Cir., 1989).

Thus, in the instant case, Foodland's property interest must yield to a limited right of access by IBT members not employed by Foodland, if denying such access would prevent effective communications between IBT members not employed by Foodland and those so employed. An Election Officer representative has personally visited the Foodland site. He found that all employees enter the Foodland property via Middlebelt Road; a driveway or roadway intersects Middlebelt Road and leads into an employee parking lot. The employees then walk from their cars to a secured entrance into the facility itself.

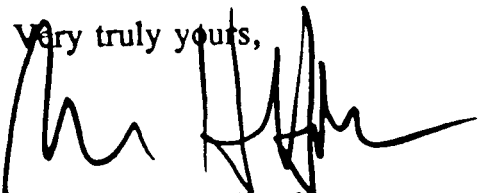
The employee parking lot is surrounded by a fence; however, entry into the lot is open and not secured. The Election Officer representative also found that there is approximately ten feet of sidewalk and grass between the road and the entrance to the parking lot. Thus, by standing on the public sidewalk and grassy areas outside the

Robert Naslanic
Page 3

parking lot fence, IBT members engaged in campaigning have access to all IBT members employed by Foodland at the Livonia, Michigan site. Foodland agrees that non-employees may distribute literature on the sidewalk and grassy area outside of the employee parking area.

Therefore, the Election Officer determines that meaningful access to IBT members at Foodland can be provided without intrusion upon Foodland's private property rights. See Election Office Case No. P-165-LU299-MGN, affirmed 91-Elec.App.-43 (access to Yellow Freight property denied where a ten-foot public area was available). Therefore, the Election Officer has determined that there is no requirement under the *Rules* that Foodland permit IBT members not employed by it to have access to its private property located on Middlebelt Road in Livonia, Michigan. Accordingly, the protest is DENIED.¹

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/mjv

¹In the course of his investigation, the Election Officer was presented with Foodland's no solicitation/no distribution policy. That policy states: "Solicitation of any kind, distribution or circulation of literature, petitions and written or printed matter of any description on Company premises shall not be done without the consent of management." Although not an issue in this protest, the Election Officer would note that to the extent Foodland enforces such policy to prevent IBT members employed by it from engaging in campaign activities - talking to fellow members, handing out literature, passing petitions and the like - in non-work areas of Foodland premises during non-work times, Foodland would be acting in violation of the right guaranteed its employees under substantive federal law and thus the rights guaranteed its employees under Article VIII, § 10(d) of the *Rules*. See NLRB v. Magnavox, 415 U.S. 322 (1974).

Robert Naslanic
Page 4

cc: Frederick B. Lacey, Independent Administrator
James De Haan, Regional Coordinator

IN RE:

ROBERT NASLANIC

and

FOODLAND DISTRIBUTORS

and

IBT LOCAL UNION NO. 337

91 - Elec. App. - 182 (SA)

DECISION OF THE
INDEPENDENT
ADMINISTRATOR

This matter arises out of an appeal from a decision of the Election Officer in Case No. P-833-LU337-MGN. A hearing was held before me by way of telephone conference at which the following persons were heard: the complainant, Robert Naslanic; Dennis Keller, on behalf of Foodland Distributors; John J. Sullivan, on behalf of the Election Officer; and James DeHaan, the Regional Coordinator.

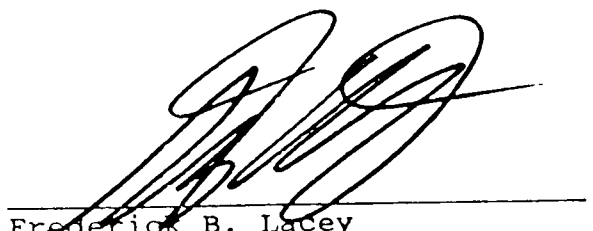
Mr. Naslanic is a member of Local 243. He is not, however, employed by Foodland Distributors in Livonia, Michigan. Foodland Distributors does employ IBT members from Local 337.

On July 29, 1991, Mr. Naslanic attempted to distribute campaign literature for Ron Carey, a candidate for IBT General President, in the parking lot of Foodland Distributors. Mr. Naslanic was asked to leave the parking lot by Foodland's Director

of Human Resources, Dennis Keller. Eventually, Mr. Naslanic was escorted off the property.

It is now settled that in resolving issues of campaign access, a balance must be struck between the IBT member's right to engage in campaign activity, the employer's property interests, and the availability of a reasonable alternative means of communicating with the IBT members employed at the worksite. See United States v. IBT (In Re: 91 - Elec. App. - 43 (SA), slip op., 88 Civ. 4486 (DNE) (S.D.N.Y. April 3, 1991). The Election Officer's investigation found that IBT members who wished to contact employees of Foodland Distributors for campaign purposes can do so without entering Foodland's private property because they can utilize the public property abutting Foodland's parking lot. Given that Mr. Naslanic has a reasonable alternative means of access, there is no need to disturb Foodland Distributors' interest in securing its own parking lot.

Accordingly, the Election Officer's denial of Mr. Naslanic's protest is affirmed.



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

Dated: September 6, 1991