

OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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Michael H. Holland
Election Officer

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September 9, 1991

VIA UPS OVERNIGHT

Mauricio Terrazas
430 S. Lincoln Ave.
Monterey Park, CA 91754

George P. Bravo
Secretary-Treasurer
IBT Local Union 208
9960 Baldwin Place, Suite 201
El Monte, CA 91731

Bill Sample
Branch Manager
Yellow Freight System, Inc.
11300 Peoria St.
Sun Valley, CA 91352

Re: Election Office Case No. P-867-LU208-CLA

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules") by Mr. Mauricio Terrazas, a member of Local 208 in El Monte, California. Mr. Terrazas is a casual employee and is not regularly employed by any particular employer. In his protest, Mr. Terrazas alleges that Yellow Freight System, Inc. prevented him from posting campaign literature on the bulletin boards at its Sun Valley terminal in violation of Article VIII, § 10(d) of the *Rules*. An investigation was conducted by Geraldine Leshin, the Election Office Regional Coordinator. The investigation revealed the following facts.

Mr. Terrazas, a member of Local 208, retired from his prior regular employer and has been working as a casual employee out of Local 208's hiring hall for several years. As a casual worker, Mr. Terrazas has worked for several different employers within Local 208's jurisdiction. According to the hiring hall records, Mr. Terrazas has never been hired to work at Yellow Freight System's Sun Valley terminal. On Tuesday, August 13, 1991 Mr. Terrazas went to the Yellow Freight facility in Sun Valley, California for the purpose of posting campaign material in support of Ron Carey's candidacy for IBT General President. Mr. Terrazas states that he entered the Yellow Freight facility and began to post the campaign literature on the union bulletin board in the Yellow Freight drivers room. Mr. Terrazas further states that he was approached by Bill Sample, the Yellow Freight System manager at Sun Valley who informed him that he was not permitted to post the campaign material on the union bulletin board in the drivers room.

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Mr. Sample states, however, that he observed Mr. Terrazas placing the literature all over the walls as well as the bulletin board. Mr. Sample says that he informed Mr. Terrazas that campaign literature could not be affixed to the walls and other similar areas in the facility. While Mr. Terrazas contests Mr. Sample's version of the conversation, the investigation revealed that the bulletin board in drivers room does contain two copies of the Carey campaign literature which Mr. Terrazas was posting on August 13, 1991.

The Advisory Regarding Political Rights, issued by the Election Officer on December 28, 1990, ("Advisory"), provides:

IBT members who are employed by a different employer or at a different location of the same employer also have certain rights, although more limited, to engage in campaign activities at the employer's premises. Since the right to engage in campaign activities is protected by substantive federal law, as well as the *Rules*, the employer's rights to private property must accommodate the right to engage in campaign activities. Jean Country, 291 NLRB No. 4 (1988).

. . . The campaign rights of members, not employed by the employer include the right to have reasonable access to the "targets" of the activities, *i.e.*, fellow IBT members. National Maritime Union v. NLRB, 867 F.2d 767 (2nd Cir. 1989). Thus, where the location of the employer's facility prevents face-to-face contact with the IBT members who work there, private property rights must yield to a limited right of access. In such situations, IBT members can campaign in non-work areas outside of the plant, terminal or other facility in locations generally open to the public such as the parking lot or outside the entrances or entrance gates to the facility. Lechmere v. NLRB, 914 F.2d 3131 (1st Cir. 1990).
Advisory at p. 2.

Thus, under the *Rules*, Mr. Terrazas' rights as a non-employee campaigning at the Yellow Freight facility at Sun Valley is limited to the right to reasonable access to the target of his activities and must be balanced against the employer's private property interests. Mr. Terrazas does not allege, and the Election Officer does not find, that Yellow Freight has ever permitted non-employees to post campaign literature on the bulletin boards at the Sun Valley facility. Mr. Terrazas and another Local 208 member John McTigue both allege that they were permitted to post on bulletin boards at other Yellow Freight facilities even though they were not employed at such facilities. It is

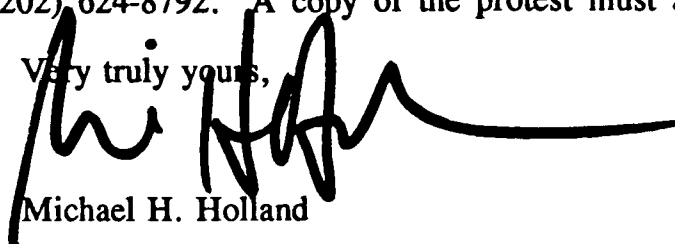
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unclear that Yellow Freight supervisory personnel at these facilities were aware of their entry or, if so aware, cognizant that were not employed by the facility. That an IBT member is able to surreptitiously gain access to the interior of an employer's premises does not establish a practice sufficient to require the employer to permit entry to all IBT members not employed by it. Further, a practice established at a particular facility is not binding at other facilities of the employer. Accordingly, Yellow Freight is not obligated under the *Rules* to permit Mr. Terrazas to post campaign literature inside its Sun Valley facility. See *Yellow Freight Systems, P-165-LU299-MGN*, affirmed 91-Elec.App.-43, affirmed, 88 Civ 4486 (DNE), (S.D.N.Y., April 3, 1991).

Yellow Freight has informed the Election Officer that it does not object to Mr. Terrazas' posting of campaign literature on the bulletin board outside the drivers room¹ notwithstanding the fact that Mr. Terrazas is not an employee at the Yellow Freight Sun Valley terminal. Since Mr. Terrazas has no greater right to access under the *Rules*, the protest is considered RESOLVED.

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

cc: Geraldine L. Leshin, Regional Coordinator

¹ A special bulletin board will be erected outside the drivers room for the express purpose of permitting campaign materials to be posted.

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Frederick B. Lacey, Independent Administrator

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