

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

October 10, 1991

**VIA UPS OVERNIGHT**

Leroy Ellis  
18807 Oakwood Drive  
Country Club Hills, Illinois 60477

Vicki Saporta  
Organizing, IBT  
25 Louisiana Avenue, N.W.  
Washington, D.C. 20001

Blue Cross/Blue Shield  
233 North Michigan Avenue  
Chicago, Illinois 60601

Robert T. Simpson, Jr.  
President, IBT Local Union 743  
300 South Ashland Avenue  
Chicago, Illinois 60607

**Re: Election Office Case No. P-899-IBT**

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Leroy Ellis, a nominated candidate for IBT Vice President from the Central Conference on the Ron Carey Slate. In his protest, Mr. Ellis alleges that Vicki Saporta, a candidate for IBT Vice President At-Large on the Shea-Ligurotis Action Team slate was permitted to campaign among IBT members employed by Blue Cross/Blue Shield of Illinois in work areas of the Blue Cross/Blue Shield offices and while the IBT members employed by Blue Cross/Blue Shield were on work time. Mr. Ellis also contends that Ms. Saporta was being paid by the IBT during the period she engaged in such campaigning activities. The protest was investigated by Regional Coordinator Julie Hamos and her staff.

Blue Cross/Blue Shield of Illinois have offices in a building in downtown Chicago known as "Two Illinois Center." The Illinois Center complex is a large building development. It includes a series of office towers and hotels connected by underground ped-ways and corridors. In addition, the complex contains retail establishments, a health club, restaurants, banks and similar service establishments.

Leroy Ellis  
October 10, 1991  
Page 2

The entry level of the building known as Two Illinois Center is composed of a foyer only with escalators leading to a concourse level containing many retail and service establishments. The concourse also provides access to the other office buildings and hotels which are part of Illinois Center. The entry level access is utilized by persons working at the many offices in that building, offices in other buildings in the complex, invitees of such business establishments, as well as retail and hotel customers who utilize the entrance to gain access to the retail, service and hotel facilities located on or through the concourse level. Persons seeking access to the offices in Two Illinois Center utilize an escalator located on the concourse level which ascends to the floor on which the elevators to the offices are located.

Ms. Saporta, during a campaign visit to the Chicago area, attempted to campaign among the IBT members employed by Blue Cross/Blue Shield by distributing literature in or about the elevators located on the third level of Two Illinois Center. After approximately fifteen minutes, she was approached by security personnel employed by the building's management, Metropolitan Management, and escorted outside of the building. Ms. Saporta was on vacation time during the day in question.

Security personnel ejected Ms. Saporta because she did not have a "permit" permitting her to engage in leafletting activities within Two Illinois Center. Metropolitan Management provides such permits upon request of a tenant. Metropolitan would provide the permit if Blue Cross/Blue Shield of Illinois requested that it do so. Blue Cross/Blue Shield refuses to request that a permit be provided for Ms. Saporta, Mr. Ellis or any other candidate for IBT International Union office.

The Election Officer's investigation reveals that Ms. Saporta was not provided access to Two Illinois Center and/or the Blue Cross/Blue Shield offices in that building greater than that afforded to Mr. Ellis or any other nominated International Union officer candidate. Ms. Saporta was also not on Union paid time during the period of her attempt to engage in campaign activities among these IBT members.

The investigation further revealed, however, that Blue Cross/Blue Shield of Illinois was refusing to permit any candidate for IBT International Union office, or any IBT member not employed by it, to gain access for campaigning purposes to the members employed at Blue Cross/Blue Shield's Illinois Center facility. The *Rules* in Article VIII, § 10(d) provide that no restrictions may be placed on IBT members' pre-existing rights to engage in campaign activities on employers' facilities. Pre-existing rights are those provided by substantive law or by reason of an employer's past practices. See Advisory Regarding Political Rights, issued December 28, 1990. The Election Officer has held that IBT members have a right protected by substantive law to engage in communications, solicitations with respect to intra-Union affairs including intra-Union elections. District Lodge 91, International Association of Machinists v.

Leroy Ellis  
October 10, 1991  
Page 3

NLRB, 814 F. 2nd 8765 (2nd Cir., 1987); NLRB v. Methodist Hospital of Gary, Inc., 732 F. 2nd 43 (7th Cir., 1984); ABF Freight System v. NLRB, 673 F. 2nd 229 (8th Cir., 1982).

The right to engage in such communications includes the right of access by IBT members not employed by the particular employer. Where denial of access to the property of an employer would prevent effective communications with such employer's employees by IBT 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 communications and solicitations with respect to trade union election activities, the employer's rights to private property must accommodate the right to engage in such campaign activities.

Property that is purely public cannot be controlled by the employer, who cannot interfere with protected activity including corporate campaigning activities on such property. Lechmere v. NLRB, 914 F. 2nd 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 if access by non-employees. Similarly, where the employer has traditionally permitted non-employees to engage in solicitation, even if other than union solicitation on its property, the employer by practice has demonstrated that its private property interest is insufficient to override access rights for union activities, including intra-union election activities.

Even where the employer has restricted its property to access by its employees only, such rights cannot outweigh the right of non-employees to have access to the property if no effective alternate means of communication exist. Lechmere v. NLRB, *supra*. In order to enforce the *Rules* and ensure that the IBT election process is not frustrated or undermined by employers of IBT members, the Election Officer has jurisdiction over such employers to insure that the access provisions of Article VIII, § 10(d) of the *Rules* are accorded. See e.g. United States V. IBT (In Re Robert McGinnis and IBT Local Union 710 and Yellow Freight Systems, Inc.), No. 88-Civ.-4486 (SNE), Slip Op. (S.D.N.Y., April 3, 1991).

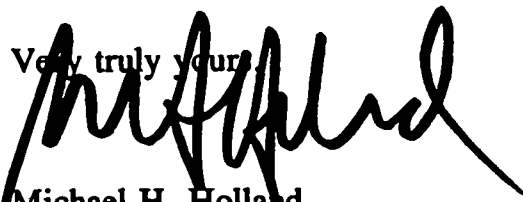
With respect to the IBT members employed by Blue Cross/Blue Shield of Illinois, there is no effective means for IBT members not employed by Blue Cross/Blue Shield to campaign among the members so employed without entry into the office building housing Blue Cross/Blue Shield's offices. Campaigning outside the building on public property would be useless. The entrance is utilized by anyone wishing to gain access to the retail establishments, hotels and all the various offices located within the complex. IBT members employed by Blue Cross/Blue Shield form only a minuscule portion of the

Leroy Ellis  
October 10, 1991  
Page 4

individuals entering the building.

Further, the owner of the office building itself has demonstrated that the private property interests are insufficient to override the campaigning rights contained in Article VIII, § 10(d) of the *Rules*. The property owner would permit campaigning within its office building provided only that Blue Cross/Blue Shield assent. No private property interests of Blue Cross/Blue Shield are at issue. Blue Cross/Blue Shield would not be burdened by assenting to the property owner issuing a "permit" to permit campaigning on the property in which Blue Cross/Blue Shield has its offices by IBT members and International Union officer candidates not employed by Blue Cross/Blue Shield. Accordingly, upon reasonable notice<sup>1</sup> to Blue Cross/Blue Shield of Illinois by any IBT member seeking a "permit" for the purpose of engaging in campaign activities in Two Illinois Center, Blue Cross/Blue Shield of Illinois shall promptly notify Metropolitan Management, the managing agents of the building, to issue such permit. Blue Cross/Blue Shield and Metropolitan Management may request reasonable identification by the IBT member seeking access.

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: Frederick B. Lacey, Independent Administrator

---

<sup>1</sup> The Election Officer would deem notice of forty-eight (48) hours before the time of anticipated campaigning to be reasonable.

Leroy Ellis  
October 10, 1991  
Page 5

Julie E. Hamos, Regional Coordinator

Metropolitan Management  
225 N. Michigan  
Chicago, IL 60601

Andra Smith-Lloyd, Esquire  
Blue Cross/Blue Shield  
233 North Michigan  
Chicago, Illinois 60607