

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

November 2, 1991

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VIA FACSIMILE WHERE INDICATED AND U.S. EXPRESS MAIL

Ernesto Aragon
1408 Alvarado Drive, NE
Albuquerque, NM 87110

Noble-Sysco
Attn: Roy Buyington, Plant Manager
601 Comanche Road, NE
Albuquerque, NM 87107
Fax: 505-761-1245

Ralph Chavez
Secretary-Treasurer
IBT Local Union 492
4269 Balloon Park Road, NE
Albuquerque, NM 87109
Fax: 505-344-2636

Re: Election Office Case No. P-968-LU492-RMT

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Ernesto Aragon, a member of Local 492. In his protest, Mr. Aragon contends that on October 9, 1991, he was denied access to the property of Noble-Sysco in Albuquerque, New Mexico, for the purpose of campaigning for the Ron Carey Slate in the upcoming International Union Officer Election.

The protest was investigated by Adjunct Regional Coordinator Jon Wilderman. Mr. Aragon is not employed by Noble-Sysco. However, he is member of Local Union 492, who represents the IBT members employed by Noble-Sysco.

Article VIII, § 10(d) of the *Rules* provide that no restrictions shall be placed upon IBT members pre-existing rights to campaign on employer premises. The pre-existing rights of IBT members, not employed at the facility where the member seeks to campaign, are far more limited than the pre-existing rights of members employed at the facility. However, as the Advisory Regarding Political Rights, issued December 28, 1990 ("Advisory") notes:

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 313 (1st Cir., 1990).

The Noble-Sysco facility is located on Comanche Road in Albuquerque, New Mexico. IBT members who work at the facility, as well as other employees, visitors, sales representatives, etc., enter the company property from Comanche Road through the Comanche gate which is located at the southwestern portion of the property. The employees park in a lot denominated "guest parking" which is to the east of the entry drive, and is reached by a east-west roadway which intersects the entry roadway. The entire facility is fenced with an eight-foot high chain-linked fence topped with barbed wire. However, the employees both enter the property and park their vehicles without having to pass any security station; the guard shack is located to the north of the parking lot and is passed by IBT members only after they park their cars as they walk to enter the warehouse facility, which is located in the northerly portion of Noble-Sysco's property.

There appears to be no public property between Comanche Road and the company's property. There is no stop sign or light at the Comanche gate. The existing conditions at the public area outside the Comanche gate--where cars leave Comanche Road to enter the company drive or leave the company drive to enter Comanche Road--are hazardous for campaigning. Noble-Sysco has stated that campaigning on the company drive in or about the Comanche gate would cause a traffic back-up and potential traffic problems.

The United States Court of Appeals for the Second Circuit in United States v. IBT, Docket No. 91-6096, decided October 29, 1991, held that the Election Officer has the authority pursuant to the March 14, 1989 Consent Order and the *Rules*, to require employers of IBT members to provide access on their property for campaigning purposes to IBT members other than their employees. In so doing, the Court noted that an employer's obedience to such compelled access would not inhibit its continued entitlement to enforce its no solicitation policy in the future. The Court stated that the Election Officer's ruling and an employer's obedience to it would establish only that the employer would be required to provide access to its property in furtherance of the Consent Order of March 14, 1989, i.e., during the election processes over which the Election Officer has jurisdiction pursuant to that Order. Slip opinion at pages 25-26.

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In its October 29, 1991 decision, the Court of Appeals held that the Election Officer could require access to the property of an employer of IBT members not employed by such employer where the Election Officer found that there were no alternative means of communication available. The Court specifically noted that the Election Officer in determining whether alternative means were available could take into consideration all pertinent matters, including time constraints imposed by the impending election schedule and cost factors. Slip opinion at page 25.

In this case, the Election Officer concludes that outside of work-site contact, there are no viable alternative means available for IBT members not employed at Noble-Sysco to communicate about the 1991 IBT International Union Officer Election with IBT members employed at that facility. The ballots for the 1991 International Union Election will be mailed on or about November 9, 1991. There is thus insufficient time for home visits or other types of face-to-face contact away from the work site. Mailing is unduly expensive. Moreover, face-to-face contact is a preferred method of communication. See National Maritime Union v. NLRB 867 F. 2d 767 (2nd Cir., 1989).

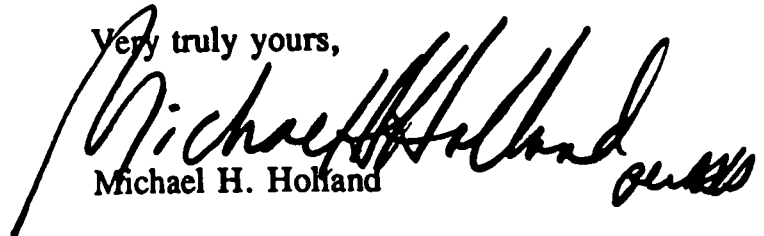
Based upon the foregoing facts, the Election Officer finds that the denial of access to the property at Noble-Sysco's facility effectively deprives IBT members of their right to campaign and is violative of the *Rules*. The Election Officer further finds that permitting access to the parking lot denominated "guest parking"--where IBT members park--is the least intrusive interference with Noble-Sysco's property rights. Access to the lot does not require intrusion onto that portion of the property secured by the guard station. The lot further appears to be open to others not employed by Noble-Sysco. The protest is GRANTED and Noble-Sysco is directed to permit IBT members--whether or not employed by it--desirous of campaigning among employees of the facility with respect to the 1991 IBT International Union Election access to the parking lot described above. Noble-Sysco may require such members to produce identification identifying themselves and demonstrating that they are members of the IBT.

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,

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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

cc: Frederick B. Lacey, Independent Administrator

Bruce Boyens, Regional Coordinator

Ron Carey
c/o Richard Gilberg, Esquire
Cohen, Weiss & Simon
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Ron Carey
c/o Eddie Burke
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**VIA FACSIMILE WHERE INDICATED AND UPS OVERNIGHT ON
NOVEMBER 4, 1991**

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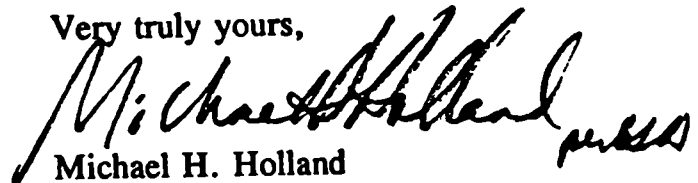
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**Re: Election Office Case No. P-968-LU492-RMT
(Addendum)**

Gentlemen:

On this date, the Election Officer issued his decision in the above matter. For the reasons articulated in that decision--the date of the ballot mailing for the 1991 IBT International Union Election--the Election Officer has determined that an appeal of his decision shall not stay the access required by that decision. *Rules, Article XI, § 2(z).*

Very truly yours,


Michael H. Holland

cc: Frederick B. Lacey, Independent Administrator
Bruce Boyens, Regional Coordinator

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