



OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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Election Officer

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September 19, 1991

VIA UPS OVERNIGHT

Archie J. Cook
4508 Balmoral Dr.
Richton Park, IL 60471

Mr. Thomas J. Walker
Vice President, Labor Relations &-3
8-3 Montgomery Ward Plaza
Chicago, Illinois 60671

Montgomery Ward Distribution Center
10601 West Seymour
Franklin Park, Illinois 60131

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

Re: Election Office Case No. P-848-LU705/710-CHI

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules") by Archie J. Cook, a member of Local Union 705. Mr. Cook alleges that on August 5, 1991 he, Pat McTie and Leroy Ellis, a nominated candidate for IBT International Union Vice President, were attempting to distribute campaign literature at the Montgomery Ward Distribution Center located at 10601 West Sycamore, Franklin Park, Illinois. Mr. Cook further alleges that they were asked to leave by a security guard.

Messrs. Cook, McTie or Ellis are not employees of Montgomery Ward. They are also not members of the Local Union which represents these Montgomery Ward employees; IBT members employed at the Distribution Center are represented by Local Union 743. However Messrs. Cook, McTie and Ellis are members of the IBT; Mr. Ellis is a nominated candidate for International office in the IBT. They were attempting to campaign among the Local 743 members employed by Montgomery Ward with respect to the IBT International Union officer election in which Mr. Ellis is running. Montgomery Ward employs approximately 700 IBT members at its distribution center.

The protest was investigated by Adjunct Regional Coordinator Deborah Schaaf. The

facts are undisputed. Messrs. Cook, McTie and Ellis arrived at the facilities of the Montgomery Ward Distribution Center at approximately 5:00 a.m. August 5, 1991. Security personnel then on duty permitted campaigning to occur on the access road leading from Sycamore to the employee parking lot and the distribution facility itself. They were permitted to campaign on this access road at the site where employees of Montgomery Ward exit the parking lot to enter the distribution facility. They so campaigned until approximately 9:00 a.m. At that time security personnel approached them and told them they could not campaign on the private property of Montgomery Ward. Messrs. Cook, McTie and Ellis then left the premises.

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 have access to an employer's property, under certain circumstances, by labor union members who are 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).

The Election Officer has an obligation to enforce the *Rules*. The *Rules* were adopted by the United States District Court for the Southern District of New York, United States v IBT, 742 F. 2d 94 (S.D.N.Y., 1990); their adoption was approved by the United States Court of Appeals for the 2nd Circuit, United States v IBT 931 F. 2d 177 (2nd Cir., 1991). The United States District Court for the Southern District of New York has ruled that the Election Officer and the Independent Administrator have the authority to enforce the *Rules* against employers of IBT members. United States v IBT (in: Yellow Freight Systems, Inc.) No. 88-CIV-4486 (DNE) slip op. (S.D.N.Y., April 3, 1991). In the Yellow Freight case the Election Officer determined, that Yellow Freight System was obliged to provide access to its facility to IBT members, including IBT members not employed by it, since such members had no reasonable means to communicate with the IBT members employed at the Yellow Freight facility without some intrusion upon Yellow Freight's private property. The Election Officer's determination was affirmed by the Independent Administrator and the District Court.

In the instant case, the Election Officer may properly require Montgomery Ward to permit Messrs. Cook, McTie and Ellis, and other IBT members similarly situated, to entry on its private property if denying such access would prevent effective communications between IBT members not employed by Montgomery Ward and those so employed. Montgomery Ward's property interests must yield to a limited right of access where denial of such access would prevent effective communications between its employees and other IBT members.

An Election Officer representative has personally visited the site of Montgomery Ward's distribution center. The Montgomery Ward distribution center is located in an industrial area; it is the last facility located on Sycamore Road. The road stops after the end of Montgomery Ward's property. There are no sidewalks between Montgomery Ward's property and Sycamore; the roadway itself has only a narrow dirt shoulder. There is, however, a twenty-six (26) foot public area between the edge of the road and the fence surrounding Montgomery Ward's property.

Montgomery Ward has demonstrated an interest in maintaining the privacy and security of its property. The employee parking lot and the area or access road where IBT members employed by Montgomery Ward walk from their cars to the distribution center is clearly guarded and fenced. There is a security trailer located twenty-six (26) feet from the juncture between Sycamore and the access road which leads to the employee parking lot and the distribution center. The employee parking lot and the access road

are surrounded by a chainlink, barbed wire fence.

Mike Sheerer
As noted above there is a twenty-six (26) foot area between West Sycamore and the fence surrounding Montgomery Ward's property. Under most circumstances the Election Officer would consider an area of such size to be sufficient to permit IBT members to engage in face-to-face campaign access to their fellow members employed at the facility without intruding on the employers private property. See Election Office Case No. P-165-LU299-MGN (ten (10) feet between roadway and employers property sufficient to permit campaigning without entry on employer's property).

In this situation, however, the Election Officer remains somewhat concerned. The entry used by employees for access to Montgomery Ward's property is also the entry utilized by trucks entering and leaving the facility. Campaigning in the twenty-six (26) foot space between the roadway and the fence would thus require IBT members to be in an area of truck traffic, a potentially hazardous situation. Further, while traffic on West Sycamore is lessened due to the fact that Montgomery Ward is the last facility located on this roadway, there is nonetheless considerable traffic. Approximately seven hundred (700) IBT members are employed at the facility. As noted above trucks travel to and from the distribution center along the roadway. Accordingly campaigning in the twenty-six (26) foot area between the roadway and the fence may create traffic problems both for Montgomery Ward and for other companies along Sycamore.

It should be noted that there has been no attempt by any IBT member to campaign within the twenty-six (26) foot area between West Sycamore and the Montgomery Ward fence. Montgomery Ward has indicated to the Election Officer its awareness of the possible safety and traffic problems that could possibly be engendered by campaign activities occurring within the twenty-six (26) foot area between West Sycamore and the fence surrounding Montgomery Ward's property. Montgomery Ward has stated that should such traffic or safety problems occur, it will permit IBT members not employed by it to engage in campaign activity on its private property, specifically on the west side of the access road leading from West Sycamore to the employee parking lot and distribution center, at or near the south gate to the parking lot, provided such members notify Montgomery Ward in advance of their intent to enter upon its property.

Given the existence of the twenty-six (26) foot area for campaign activities without requiring intrusion on Montgomery Ward's property and given Montgomery Ward's assurances that if such campaigning creates a safety or traffic problem IBT members not employed by it will be granted access to its property, the Election Officer DENIES the instant protest. Should IBT members find that campaigning in the twenty-six (26) foot area between West Sycamore and the fence surrounding Montgomery Ward's property creates safety or traffic problems but Montgomery Ward, despite its assurances, refuses to permit access to its private property, a new protest may be filed.

Archie Cook
September 10, 1991
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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/cdk

cc: Frederick B. Lacey, Independent Administrator
Julie E. Hamos, Regional Coordinator