

IN RE:

GAIL MCDONNELL

01 - Elec. App. – 046(KC)

This matter is an appeal from the Election Administrator’s (the “EA”) decision 2001 EAD 205, issued March 1, 2001. The hearing was requested by Irwin Cutler, Esq. of the law firm Segal, Stewart, Cutler, Lindsay, Janes & Berry PLLC, on behalf of Teamsters Local Union 89 in Louisville, Kentucky.

A hearing was held before me on March 12, 2001. The following persons were heard by way of teleconference: Jeffrey J. Ellison, Esq. for the Election Administrator’s Office; Mr. Cutler; and Gail McDonnell, the protestor and member of Local Union 89. No additional submissions were received by this office.

This protest alleged that campaign bumper stickers were removed from a general-use and union bulletin board at Smurfit Stone Container (the “Company”) where Ms. McDonnell works as a lab tester. Ms. McDonnell claims the removal of the campaign material from these two boards was a violation of the Rules and done as a result of advice given by Ben Bramble, a Local Union 89 business agent, to her supervisor at the Company.

Article VIII, Section 11(d) of the Rules states “[n]o restrictions shall be placed upon candidates’ or members’ preexisting rights to use employer or Union bulletin boards for campaign publicity”. Case law holds that where there has been a practice of using a bulletin board for general purposes, union members have a right to use it for campaign purposes, even if the bulletin board has not been so used before (See, page 2, 2001 EAD 205, citing to Cassella, P794 (July 15, 1996)). The EA, having determined that both of the bulletin boards in question were general-use boards and that campaign material had been posted on both boards in prior

elections, granted the protest¹. Part of the remedy imposed by the EA was for both the Local Union and the Company to cease and desist from removing campaign literature, and to post a Notice to that effect on the union bulletin board at the Company.

Mr. Cutler, on behalf of Local Union 89, argues that since there was no evidence or an eyewitness that anyone from Local Union 89 removed the campaign material, the EA should not have included the reference to Local Union 89 in the remedial Notice². He explained that the effect on the members caused by the posting of this Notice "... can not be erased and the stain on Local 89's reputation cannot be erased." (See, Page 6, Appeal of Teamster Local 89, dated March 5, 2001). However, when asked at the hearing if local union officials would have removed the material if they had seen it posted on the union bulletin board, Mr. Cutler conceded that because of Local Union 89's long standing policy prohibiting the posting of campaign material on union bulletin boards, they would have removed it. Based on this concession I find the remedial Notice referencing Local Union 89 to be justified and I affirm the EA's decision as to the remedy.

Mr. Cutler also argues that it is Local Union 89's long standing policy to only allow officially signed Union bulletins on its union board. However, Ms. McDonnell in rebuttal recited at the hearing a list of the materials currently posted on the union board, which included a local restaurant menu and various advertisements for auto service, credit union and automobiles for sale.

¹ The EA spoke to Ms. McDonnell, Loretta DeVasier, a former steward at the Company who was responsible for posting notices on the boards, and Mr. Bramble about prior posting of campaign material on the bulletin boards. While both Ms. McDonnell and Ms. DeVasier confirm the prior postings, Mr. Bramble was unable to verify whether the Local Union's no-posting policy was in effect in prior elections. The EA credited the statements of Ms. McDonnell and Ms. DeVasier as to the prior posting of campaign materials.

The factual findings of the EA are to be given great deference, and I am satisfied that the EA's conclusion in this matter as to the general use of both bulletin boards is correct.

Accordingly, I affirm the EA's decision in granting the protest.

s/Kenneth Conboy
Kenneth Conboy
Election Appeals Master

Dated: March 16, 2001

² The statement in the Notice objected to by Mr. Cutler was "The Election Administrator has directed Smurfit Stone and Local 89 to cease and desist from the removal of campaign material from these boards."