



OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
25 Louisiana Avenue, NW
Washington, DC 20001
(202) 624 8778
1 800 828 6496
Fax (202) 624 8792

Michael H Holland
Election Officer

Chicago Office
% Cornfield and Feldman
343 South Dearborn Street
Chicago, IL 60604
(312) 922-2800

January 2, 1991

UIA UPS OVERNIGHT

Dan S Gage
11817 82nd Ave. So
Seattle, WA 98178

J Michael Cserepes
Secretary-Treasurer
IBT Local Union 313
270 S. 27th St.
Tacoma, WA 98402

Bill Lueke
Business Representative
IBT Local Union 313
220 South 27th
Tacoma, WA 98402

Re: Election Office Case No. P-083-LU313-PNW

Gentlemen.

A pre-election protest has been timely filed under Article XI, § 1 of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*"). In his protest, Daniel Gage contends that the Business Agent of Local 313 removed campaign material from a bulletin board located at ABF Freight; Mr. Gage alleges that such removal violated the *Rules*

The investigation shows the following. Bill Lueke, a Business Agent from Local 313 admits that on December 4, 1990 he, in fact, removed the campaign literature that had been posted by Dan Gage. He believes, however, that he was permitted to remove the material both by the *Rules* and the National Master Freight Agreement (NMFA) which restricts posting on union bulletin boards to "official union business"

The bulletin board in question is about eight feet by four feet. It is the property of ABF who uses it to post safety notices. The employer representative in this case, ABF terminal manager, Tim Choquette, states that the board has been used by the Union without Employer objection, although no particular side of the board has been set aside for the Union.

Bill Lueke states that in practice the Union has used the left-hand portion of the board since 1984.

~~In February 1990, Dan Gage was granted permission upon his request, by Mr. Choquette to post campaign material on the board.~~ Since that time, he has been regularly posting literature, including campaign literature on the bulletin board. He posts on the Union side of the board.

There have been a series of confrontations between Gage and Lueke concerning Gage's use of the Board. Lueke states that he removed the literature the first and every time he saw it up. ~~Michael Oseropes, Secretary-Treasurer of Local Union 313, says that he and business agent Cary Bertram discussed the matters with Choquette and advised him that their portion of the Board was reserved exclusively for Union Business.~~ Gage admits that the Union consistently removed all postings other than official Union materials.¹

Choquette states that he was unaware at the time he gave Gage permission to post Carey literature of language in the NMFA which limits bulletin board posting to "official Union business". He was also unaware that Company policy was consistent with the terms of the NMFA.

~~There is no evidence from the protestor, the Union, or the Employer that there have been campaign posting previous to February when Gage commenced posting. Gage admits that the Union has been diligent in removing such literature. There is no evidence that the bulletin board has been used by employees for communication purposes, other than official Union business. Thus there is no evidence to conclude that this bulletin was or even became a general purpose bulletin board.~~

Article VII, §10(d) of the *Rules* provides that no restrictions shall be placed on employees pre-existing rights to campaign. Thus, where a bulletin board on the employer's premises has been used in the past to post materials other than, or in addition to, official Union or employer notices, IBT members have a right to use the bulletin board for campaign posting

¹Gage filed charges with the NLRB alleging a violation of the NLRA because the Union removed his material. These charges were dismissed by the Region, and Gage's appeal of the dismissal was denied. 19-CB-6761 (NLRB)

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In this case, however, the evidence does not support a finding that members had a pre-existing right to use the bulletin board as a general purpose bulletin board. But for the campaign posting that Gage commenced in February 1990, there is no evidence of posting other than official Union business. And the Union consistently and diligently removed such posting.

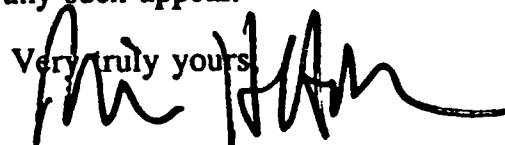
The Employer, was not free in February 1990, to permit Mr. Gage to use the Union's side of the bulletin board for other than Union business. The Employer cannot waive the Union's position with respect to its bulletin board. There is no evidence of Union waiver in this case.

If, however, the Employer wishes to allow a space on its side of the bulletin board it may do so, and such space shall be reserved for all candidates' campaign materials. The Election Officer notes that access to the bulletin board is the easiest way for the Employer and the Local to insure equal access for campaign purposes. The Election Officer will closely review all future protests with respect to access, in the event some portion of the bulletin board is not available for campaign purposes.

Accordingly for all the foregoing reasons, the protest is DENIED.

If any person is not satisfied with this determination, he may request a hearing before the Administrator within twenty-four (24) hours of his receipt of this letter. Such request shall be made in writing and shall be served on Administrator Frederick B. Lacey at LeBoeuf, Lamb, Leiby & MacRae, One Gateway Center, Newark, N.J. 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. 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.

Very truly yours,



Michael H Holland

MHH/MJC/sst

cc: Frederick B Lacey, Independent Administrator, IBT
Christine M Mrak, Regional Coordinator

IN RE: :
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 DANIEL S. GAGE :
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 Complainant, :
 :
 and :
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 IBT Local Union 313, :
 :
 Respondent :
 :

91-Elec. App. 34

DECISION OF THE
INDEPENDENT ADMINISTRATOR

This matter is before me on appeal from a January 2, 1991, decision of the Election Officer in Case No. [REDACTED]. A hearing was conducted in my office on January 9, 1991, by way of teleconference during which the following persons were heard: Daniel S. Gage, the appellant; Christine Mrak, the Regional Coordinator; Patricia Warren, the Adjunct Coordinator; John Sullivan, on behalf of the Election Officer; and Mike Cserepes, the Secretary-Treasurer of IBT Local Union 313 ("Local 313").

This is a "posting" case. At issue is the right of members of Local 313 to post campaign material on a bulletin board located at ABF Freight System, Inc. used for employer's notices and official union business. Mr. Gage posted certain campaign materials on a bulletin board at ABF Freight Systems. It was removed by persons within Local 313 because it was not related to "official union business."


The employer had no right to authorize Mr. Gage to post campaign material on the bulletin board. While permission had been granted by an employer representative to do so, he has since recognized his error.

The Election Officer's Findings of Fact and Conclusions of Law are included in his Summary attached hereto.

I find there is ample support for the Election Officer's determination and I affirm. Mr. Gage's protest was properly denied.

Dated;

Jan. 9, 1991


Frederick B. Lacey
Independent Administrator