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February 13, 1991

VIA UPS OVERNIGHT

Michael R Barta
24455 Dahle Avenue
Faribault, MN 55021

Richard J. Heck
Secretary-Treasurer
IBT Local 638
3001 University Avenue, S.E.
Minneapolis, MN 55414

United Parcel Service
3312 N E Broadway
Minneapolis, MN 55413

Gary Clark
7 Aspen Court
Faribault, MN 55021

Re: Election Office Case No. P-315-LU638-NCE

Gentlemen.

Complainant, Michael R Barta, filed a pre-election protest pursuant to Article XI, Section 1 of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*"). He alleges that Gary Clark of United Parcel Service ("UPS") removed a piece of Ron Carey literature that complainant had posted on a bulletin board at the Owatonna UPS facility. Complainant had reposted the literature and again it was removed.

It was alleged that this action of the Company is a violation of Article VIII, Section 10(d) of the *Rules* pertaining to members preexisting right to use Union or employer bulletin boards. It is the position of the employer and of the Local Union that these bulletin boards were limited to official Union and Company notices, and that they are not available for general usage by IBT members.

Complainant has forwarded to the Election Officer pictures of items of a personal nature found on the Owatonna, Minnesota bulletin board, as well as, bulletin boards at two other UPS facilities. Complainant acknowledges that the Company has consistently stated that the bulletin boards in question were limited to Company or Union business and personal items should not be placed thereon. However, complainant alleges that in the last year, at least prior to the beginning of the delegate selection process, there were occasionally miscellaneous items of a personal nature posted on the boards. The Company position is that whenever items of a personal nature are observed on the

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bulletin board, they are removed by the supervisors.

Article VIII, Section 10(d) of the *Rules* provides "no restrictions shall be placed upon candidates' or members' pre-existing rights to use employer or Union bulletin boards for campaign publicity." The *Rules* also provides that "such facilities and opportunities shall be made equally available on the same basis to all candidates and members." The "Advisory Regarding Political Rights," issued by the Election Office on December 28, 1990, provides that ". . . neither the Union nor the Employer can change or limit bulletin board usage." Thus, where a bulletin board on the employer's premises has been used to post materials other than, or in addition to, official Union or employer notices, and even though such other postings have never included campaign postings, IBT members have a right to use the bulletin board for campaign postings, subject to the regulations applied to "general purpose" postings, such as length of time the material may remain posted, the dimensions of the postings, and the like. Helton v. N.L.R.B., 656 F 2d 883 (D C Cir 1981), A B.F. Freight System v. N.L.R.B., 673 F 2d 229 (8th Cir 1982)

Thus, if the bulletin boards in question were general purpose bulletin boards, than the complainant would have the right under the *Rules* to place campaign literature on them. Yet the facts in this case indicate that the bulletin boards in question are not general use boards. Both the Employer and the Union assert that the boards were not dedicated to general purposes, and the complainant acknowledges that this always was the position taken by the Employer.

While there appear to have been episodic postings of notices of a personal nature, sporadic postings of a general nature are insufficient to convert an official board to a general purpose one. The evidence submitted by Mr Barta does not alter the conclusion that no such conversion took place. The evidence submitted showed only a small number of purportedly general purpose postings. The fact that the evidence submitted related to three separate boards at three locations further indicates that any general purpose postings were limited. Further certain of the documents posted were not, in fact, general postings, but Company or Union related notices, e g, notices of tournaments sponsored by the Company and/or the Union, sale of unneeded Company uniforms. Further certain of the general postings were removed within a short period by the Company supervisory personnel. There is, thus, insufficient evidence to demonstrate that the bulletin boards became general purpose bulletin boards.

As the boards in question were never dedicated to general purposes, it cannot be said that the Company violated the complainant's rights in this matter. Therefore, in accordance with the foregoing this protest is **DENIED**

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

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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/ads

cc Frederick B Lacey, Independent Administrator
Barbara Z Quindell, Regional Coordinator