



OFFICE OF THE ELECTION OFFICER
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Michael H. Holland
Election Officer

October 14, 1991

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VIA UPS OVERNIGHT

Paul E. Gray
911 Stratford
West Memphis, AR 72301

Jimmy W. Carrington
President
Teamsters Local 667
796 E. Brooks Ave.
Memphis, TN 38116

Clyde Maxwell
Linehaul Manager
Yellow Freight System, Inc.
3914 East Shelby
Memphis, TN 38118

Re: Election Office Case No. P-839-LU667-SOU

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Paul Gray. In his protest, Mr. Gray contends that Yellow Freight has improperly removed campaign material from its general bulletin board and issued a policy regarding posting on the general purpose bulletin board which violate the *Rules*.

On July 29, 1991, Local 667 filed a grievance protesting the bulletin board regulations issued by the company on July 26, 1991. On August 9, 1991 the Election Officer deferred resolution of Mr. Gray's protest until Local 667's grievance was resolved. The Joint Grievance panel denied Local 667's grievance thereby upholding Yellow Freight's July 26, 1991 policy on general purpose bulletin board postings. Thus, the protest is ripe for determination by the Election Officer.

The Election Officer has, pursuant to the *Rules*, jurisdiction and authority to determine the instant protest on its merits. In Re McGinnis and Clement and IBT Local Union 710 and Yellow Freight System, Inc., 91-Elec. App.-43, affirmed United States v. IBT, 88 Civ. 4486 (S.D.N.Y., March 4, 1991). Further, the Election Officer is not bound in whole or in part by the decision reached in the grievance proceedings. In Re Teller and Sealand Service, Inc. and IBT Local Union 741, 91-Elec. App.-92.

In Mr. Gray's original protest, he alleged that Line Haul Manager Clyde Maxwell had removed campaign literature posted on the general purpose bulletin board. In mid-July, Mr. Maxwell in fact removed all material on the general purpose bulletin board. He claims he did so due to the over-crowded and disheveled appearance of the bulletin board and the need to use the space for certain official postings regarding customer quality programs during an anticipated visit of a Yellow Freight divisional vice president.

The Election Officer's investigation indicates that everything on the bulletin board was taken down by Mr. Maxwell, not simply Mr. Gray's material, and not simply campaign materials. Mr. Maxwell reorganized the bulletin board and reposted all campaign literature the following day. It thus appears, as the company claims, that the removal of all material from the bulletin board was temporary, non-discriminatory and for a valid business reason. No campaign material has been removed from the bulletin board for reasons other than timeliness, see *infra*, since that date. Based upon the foregoing facts, the Election Officer finds no violation with respect to Yellow Freight's temporary removal of campaign literature.¹

Mr. Gray also protests the memo issued by the company on July 26, 1991 setting forth regulations for postings on the "general purpose bulletin board." In particular, Mr. Gray protests the size restriction (8½ by 11 inches), the maximum posting time of seven (7) days, and item D of the policy which regulates the content of posted materials:

Posted items which are obscene, inflammatory, engage in name-calling or may provoke confrontation will be removed. Anything that may be offensive to our customers will be removed.

The Election Officer investigation revealed that the restriction on the size of postings was reasonable based upon the limited amount of space available on the general posting bulletin board for members' use. The seven (7) day posting limitation does not prohibit campaign material from being posted for a longer period of time since Yellow Freight has agreed that the material can be reposted for additional periods of seven (7) days. To date, the company has not refused to permit such reposting. The regulations with respect to size and duration of postings do not violate the *Rules*.

Mr. Gray, as well as Local 667, object to the content regulation of paragraph D of the July 26, 1991 memo. Yellow Freight defends this restriction as necessary to

¹ The Election Officer trusts and assumes that Yellow Freight will continue not to remove properly posted campaign literature even on a temporary basis given the proximity to the International Union officer election. Any protest demonstrating a deviation from this policy will be viewed with extreme disfavor by the Election Officer.

prevent disruptions and disturbances in the plant. To date, Yellow Freight has not removed any campaign postings for violating item D of its July 26, 1991 policy.

The *Rules* do not allow for censorship as to the content of campaign literature, e.g. *Rules*, Article VIII, § 6(g). The company need not, however, permit postings which are patently obscene or which disparage the company's product or services or hamper its sales relationships with its customers. See, e.g., NLRB v. Electrical Workers, Local 1229, 346 U.S. 464 (1953). Provided Yellow Freight so interprets its policy, as it appears to be doing, there is no violation of the *Rules*. A more restrictive interpretation of item D of the July 26, 1991 policy - e.g. removing literature because some IBT members are offended by the political message of the posting - might, however, violate the *Rules*. Because no items have been removed from the bulletin boards based upon item D of the company's July 26, 1991 policy, the Election Officer does not find sufficient evidence of a violation at this time and the protest is DENIED.²

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/ca

cc: Frederick B. Lacey, Independent Administrator

² If the company removes campaign postings based on item D of its policy for other than patent obscenity or disparagement, a new protest may be filed. If the Election Officer finds such protest valid, the Election Officer will impose an appropriate remedy which could require the company to mail to its employees the literature it improperly removed from the bulletin board.

Paul E. Gray
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