

***PRE-ELECTION
PROTEST
DECISIONS***

ELECTION OFFICE CASE NOS

P-001-LU270-SEC to P-050-LU41-MOI

VOLUME I

***Michael H Holland
Election Officer
June 1992***

OFFICE OF THE ELECTION OFFICER
INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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Michael H Holland
Election Officer

September 24, 1990

Chicago Office
% Cornfield and Feldman
343 South Dearborn Street
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(312) 922 2800

Mr. Mitchel Ledet
President
IBT Local Union 270
Post Office Box 3398
New Orleans, Louisiana 70177

Mr. Allen C. Hall
7670 Pine Bluff Road
Denham Springs, Louisiana 70726

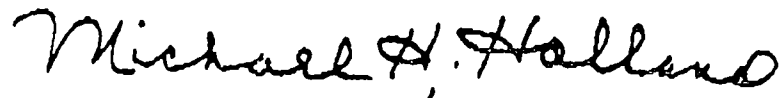
Gentlemen

The election protest filed by Allen C. Hall has been investigated by the Election Officer. The Election Officer concludes that the *Rules for the IBT International Union Delegate and Officer Election* have been violated.

To remedy this violation, the Election Officer hereby orders that the enclosed Notice be signed by Mitchel Ledet and, at Local Union expense, be: (1) posted on all Union bulletin boards or other locations at Matlack, Inc where notices to IBT members are customarily posted, and (2) mailed to all members of Local Union 270 employed by Matlack, Inc at such members' last known home addresses.

Posting shall occur within five days of receipt of this letter, and shall be maintained for a period of thirty consecutive days thereafter. Mailing shall occur within seven days of receipt of this letter. Within ten days of receipt of this letter, Mr. Ledet shall file an appropriate affidavit with the Election Officer affirming that such posting and mailing has been accomplished.

Very truly yours,


Michael H. Holland /kpm

MHH/kpm

Enclosure

cc Donald H Williams, Election Office Regional Coordinator

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**NOTICE TO ALL TEAMSTER MEMBERS
EMPLOYED BY MATLACK, INC.**

FROM MITCHEL LEDET, PRESIDENT, IBT LOCAL UNION 270

You have the right to participate in campaign activities on behalf of candidates for delegate and alternate delegate to the 1991 IBT Convention.

You have the right to participate in campaign activities on behalf of candidates for International Office in the IBT

You have the right to post campaign material on employer and Union bulletin boards at Matlack, Inc., since such bulletin boards have been used in the past for similar postings

No one, no company official, business agent, steward, or member can intimidate, harass, threaten, or prohibit you from engaging in the above-described campaign activity

I will not interfere with your right to post campaign material on Union or employer bulletin boards at Matlack, Inc

I hereby revoke all statements I made, both oral and written, which said that you could not use such bulletin boards for posting campaign publicity.

**MITCHEL LEDET, President
IBT Local Union 270**

This is an official notice and must remain posted for thirty consecutive days from the day of posting, and must not be altered, defaced, or covered by any other material.

ALLEN C. HALL,	:	90 - Elec. App. - 1
Claimant/Appellee,	:	
v.	:	
IBT LOCAL UNION 270 and	:	DECISION OF THE
MITCHEL LEDET,	:	INDEPENDENT ADMINISTRATOR
Respondents/Appellants.	:	

I. INTRODUCTION

This matter involves an appeal of a determination by the Election Officer of a preelection protest (90-SEC-1) pursuant to the procedures set forth in Article XI of the "Rules For The IBT International Union Delegate And Officer Election," (the "Rules").

The preelection protest was filed by Allen C. Hall, a rank and file member of Local Union 270. The Election Officer issued his determination on the protest by letter dated September 24, 1990, mailed to Mitchel Ledet (President of Local 270) and Mr. Hall. By letter dated September 27, 1990, to me, Mr. Ledet, through his attorney, requested an "appeal/hearing of the [Election Officer's] ruling dated September 24, 1990." In accordance with Article XI, Section 1.a.(7) of the Rules, I immediately scheduled a hearing to be conducted October 2, 1990, at 3:30 P.M. On October 1, 1990, the Election Officer, Mr. Hall's attorney and Mr. Ledet's attorney consented to submitting this matter "on the papers." On October 3, 1990, I received the following submissions:

1. Election Officer Summary;
2. Mr. Hall's Letter Memorandum;
3. Mr. Ledet's and Local 270's Memorandum; and
4. The Election Officer's supplemental October 2, 1990, letter submission.

In addition, on October 3, 1990, via facsimile, I received a two-page letter from IBT General Counsel James T. Grady, which had attached to it a copy of Mr. Ledet's and Local 270's Memorandum. In its submission, the IBT indicated that it "joins with Local 270 in urging [me] to affirm the position of President Mitchel Ledet. . . ." The IBT argued that since the appeal involved a collective bargaining agreement, the subject matter was "expressly . . . outside [my] jurisdiction" pursuant to the March 14, 1990, Consent Order (Section F.12.(B).(ii) at p.11). The IBT raised an additional jurisdictional argument citing Section M.17.(c). at p.26 of the Consent Order, since the appeal implicated "the conduct and operation of the affairs of . . . [an] IBT affiliated entity. . . ." Lastly, the IBT argued that Mr. Hall was seeking to use the Consent Order to create a "benefit" which was contrary to the terms of the Consent Order (Section P. at p.27).'

First, the IBT is not a party to this appeal. Article XI, Section 1.a.(7) of the Rules provides that:

The following individuals may be present at such hearings: the complainant(s) and/or his/her representative(s); any representative(s) of the Union(s) involved; the Election Officer or his representative; the person(s) filing the appeal, if other than the complainant(s), and/or his/her representative(s); and any

1/ The IBT also cites to Section P. at p.21 in support of this argument. Not only is there no such section "P" on page 21, but there is no language on that page which would be applicable to the argument.

other person who obtains the permission of the Administrator or his designee.

As the IBT did not obtain my permission to participate in this hearing, I need not consider their submissions. Moreover, even if the IBT had my permission, their submission was out of time. In the interest of closing the record on this matter, however, I have reviewed and considered the IBT's submission and find its arguments without merit. Moreover, I find that the IBT, in making such arguments, blatantly ignores the import of Judge David N. Edelstein's July 10, 1990, decision in which he modified, approved and directed compliance with the Rules.

II. THE PROTEST

The protest filed by Mr. Hall raises the issue of the right of the members of Local 270 to post campaign publicity materials on bulletin boards maintained within the business premises of Matlack, Inc. ("Matlack"). Local 270's members are employed by Matlack.

Mr. Hall, in a letter dated July 10, 1990, to Mr. Ledet, stated, in part:

On April 19, 1990, Terminal Manager Al McMahan, removed several items from the bulletin board designated as the union board. On this occasion he even removed some materials important to informing members of events such as the grievance committee results of April 11, 1990, on fueling.

Along with these, he also removed some of my activist materials and information.¹

What I would like to know is are you going to allow censorship of your members and their ideas? In the past, Eugene Brown [Business Agent], Bob Lewis [Business Agent], and Nolan LeBlanc [Secretary-Treasurer], have all seen my postings and said nothing directly to me about taking them down. Also other items have been posted on that bull[e]tin board without prejudicial concern.

On July 13, 1990, Mr. Ledet responded, citing "Article 28 of the union contract." The "union contract" referred to by Mr. Ledet is the "Tank Line Agreement" entered into between Matlack and IBT Local 270. Article 28 provides as follows:

Matlack agrees to the posting within its business premises of notices of Union meetings, etc., by an elected or appointed official of the Local Union.

Relying on Article 28, Mr. Ledet stated in his letter that:

Since [Mr. Hall is] neither an appointed or elected officer of the Local Union, [he has] no right to post anything on the Union bulletin board.
[emphasis in original]

Mr. Ledet further stated that he had spoken to Nolan LeBlanc (Secretary-Treasurer) and Bob Louis² (Business Agent) and they informed him that they had "never condoned any postings on the bulletin board other than official union business." According to Mr. Ledet, Eugene Brown (Business Agent) is deceased. In closing Mr. Ledet stated:

Only official correspondence signed by one of the three persons mentioned above [Ledet, LeBlanc or Louis]

^{2/} In the "Election Officer Summary" he describes the materials in question as including "campaign publicity and solicitation" literature. Election Officer Summary at p.5.

^{3/} Mr. Hall spelled this individual's name as "Lewis."

is to be posted on the bulletin board and that will be done only by the signee or the appropriate union steward.

Our members at Matlack will be informed by use of the Union bulletin board by the proper officers of the Union and only by them. This, of course, does not include you, as you are a rank and file member.

Apparently considering Mr. Ledet's conclusion a violation of Article VIII, Section 10.d. of the Rules,⁴ Mr. Hall filed his protest with the Election Officer. On September 24, 1990, the Election Officer issued his determination, a copy of which is attached hereto. In pertinent part, the determination provided as follows:

To remedy this violation, the Election Officer hereby orders that the enclosed Notice be signed by Mitchel Ledet and, at Local Union expense, be: (1) posted on all Union bulletin boards or other locations at Matlack, Inc. where notices to IBT members are customarily posted; and (2) mailed to all members of Local Union 270 employed by Matlack, Inc. at such members' last known home address.

III. THE POSITION OF LEDET AND LOCAL 270

A. THE TIMELINESS OF THE PROTEST

Article XI, Section 1.a.(1) of the Rules provides:

Protests regarding the following [including improper or inequitable denial of access to the membership] must be filed within forty-eight (48) hours or such protests shall be waived.
[emphasis in the original]

Ledet and Local 270 contend that Mr. Hall's protest was untimely and thus waived because he "did not file his protest until August

⁴/ Article VIII, Section 10.d., provides in pertinent part: "No restrictions shall be placed upon candidates' or members' pre-existing rights to use employer or Union bulletin boards for campaign publicity."

6, 1990, more than forty-eight hours from the time of the ruling of Mr. Ledet, specifically July 13, 1990." Ledet's and Local 270's Memorandum at p.2.

This argument is rejected for the reasons noted by the Election Officer in his October 2, 1990, supplemental submission: "continued enforcement by Local Union 270 of what [the Election Officer has] held to constitute an improper restriction on access to bulletin boards would make a protest timely whenever filed." See Mason & Hanger - Silas Mason Co., Inc., 767 NLRB No. 122, 66 LRRM 1200 (1967) (continued enforcement of rule improperly restricting solicitation remediable even where underlying charge challenging the rule was filed beyond the statute of limitation, i.e., more than six months after the rule was promulgated). As stated by the Election Officer, his "investigation disclosed that Local Union 270 was adhering and would continue to adhere to its position that only its President, Secretary-Treasurer, and Business Agent could authorize postings, and that no campaign materials were to be posted," it being Ledet's position that "[o]nly official correspondence signed by one of the three persons mentioned above is to be posted on the bulletin board."

B. THE MERITS OF THE PROTEST

Mr. Ledet and Local 270 challenge the merits of the Election Officer's determination by simply arguing that Mr. Hall's posting of unofficial information on the bulletin board was in violation

of Article 28 of the Tank Line Agreement. Ledet's and Local 270's Memorandum at p.3.

IV. THE POSITION OF HALL AND THE ELECTION OFFICER

Mr. Hall contends that Local 270 members in addition to the Local Officers and Business Agents have historically posted material on the bulletin boards within the Matlack premises. Such postings have included personal notices, religious notices, materials relating to internal union politics as well as Local Union election publicity and fund raising documents. Mr. Ledet and Local 270 do not dispute this assertion. Moreover, the Election Officer's Findings of Fact as set forth in the Election Officer Summary at pp.3-5, are in full accord with Hall's position.

Hall argues that as a matter of law, "neither an employer nor a union may prevent employees from posting union literature on company bulletin boards where, as here, employees were allowed to post other kinds of material in the past." The Election Officer reaches the same legal conclusion. See, e.g., Helton v. NLRB, 656 F.2d 883 (D.C. Cir. 1981) (Union committed unfair labor practice when it refused to allow employees to post materials critical of union on the union's bulletin board, despite collective bargaining prohibition on such postings, where it was found that such prohibition had not been enforced in the past); Container Corp. of America, 244 NLRB no. 53, 102 LRRM 1162 (1979) (Employer violated LMRA when it removed union's news letters from bulletin boards and threatened employee with disciplinary action for any reposting of

newsletters, since workers in past used bulletin boards to post personal and union notices without policing by employer); Vincent's Steak House, 216 NLRB 647 (1975) (An employer interfered with protected rights by removing an article about union picketing over another restaurant's rule that waitresses appear happy, since the bulletin board on which the notice was posted had always been available for personal use, in spite of a rule to the contrary).

The Election Officer further concludes that the "proven past practice of permitting postings binds Local 270 regardless of whether the Local President, Secretary-Treasurer and/or Business Agent knew or condoned such practice." Election Officer Summary at p.6, citing Wagner Electric Corporation, 76 LA 773, 780 (Raymond R. Roberts, 1981) (knowledge of union steward sufficient to bind union); Chattanooga Box and Lumber Company, 44 LA 373, 376 (Sam Davis, 1965) (knowledge of bargaining unit employees imputed to union).⁵

V. CONCLUSION

1. I find that the bulletin boards within the Matlack premises have historically been used by Local 270 members in addition to the Local officers and business agents for the posting of materials other than "official union business." Included in

⁵/ The Election Officers' interviews with two former Local Union stewards and a bargaining unit member, one from each Matlack location employing Local 270 members, revealed that: (1) Union bulletin boards had historically been used for the posting of personal notices and information; and (2) internal union election material had been posted on the bulletin boards in the past.

such materials were literature relating to internal union politics as well as local union election publicity and fund raising documents.

2. Mr. Ledet's July 13, 1990, decision, as it applies to Mr. Hall's posting of campaign materials, constitutes a wrongful restriction upon a "members' pre-existing rights to use employer or union bulletin boards for campaign publicity," in violation of Article VIII, Section 10.d. of the Rules.

3. The limitation found in Article 28 of the Tank Line Agreement is inapplicable given the past practice of allowing personal as well as official union literature to be posted on bulletin boards located on Matlack's premises by both rank and file members and union officials.

4. The proven past practice of permitting such postings binds Local 270 regardless of whether the Local President, Secretary-Treasurer and/or Business Agent knew or condoned such practice.

5. The remedy ordered by the Election Officer is appropriate and necessary to eradicate any confusion and correct any misinformation Local 270 members employed at Matlack may have about their rights to: (1) participate in campaign activities on behalf of candidates for delegate and alternate delegate positions to the 1991 IBT Convention as well as candidates for International Office in the IBT; and (2) post campaign material on employer and Union bulletin boards at Matlack.

VI. ORDER

The September 24, 1990, determination of the Election Officer is to be followed in all respects except as modified below:

1. The posting of the Notice to be signed by Mr. Ledet shall occur within five days of the date of this decision, and shall be maintained for a period of thirty consecutive days thereafter;

2. Within ten days of the date of this decision, Mr. Ledet shall file an appropriate affidavit with the Election Officer affirming that such posting and mailing has been accomplished;

3. All expenses incurred by Local 270 in this matter, including the payment of reasonable attorneys fees and the mailing of the Notice to all the members of Local Union 270 employed by Matlack, shall be at Mr. Ledet's own personal expense, since the position taken by Mr. Ledet was so at odds with established law and the Local's own historic practice, that it cannot be considered anything other than Mr. Ledet's personal attempt to frustrate the election process envisioned by the Consent Order. Similarly, Mr. Ledet, personally, shall reimburse Mr Hall for his reasonable costs and attorneys fees incurred in this appeal.

15/ FBLSM

Frederick B. Lacey
Independent Administrator

Dated: October 4, 1990