



OFFICE OF THE ELECTION OFFICER  
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Michael H. Holland  
Election Officer

November 7, 1991

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**VIA UPS OVERNIGHT**

Michelle Argentine  
416 Carpentaria Road  
Aromas, CA 95004

United Parcel Service  
1122 River Street  
Santa Cruz, CA 95060

Sergio Lopez  
Secretary-Treasurer  
IBT Local Union 912  
163 West Lake Ave.  
Watsonville, CA 95076

**Re: Election Office Case No. P-1018-LU912-CSF**

Gentlemen and Ms. Argentine:

A protest was filed pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Michelle R. Argentine, a member of Local Union 812. In her protest, Ms. Argentine alleges that her rights under the *Rules* were violated by her employer, United Parcel Service ("UPS") when she was denied the right to post campaign material on a bulletin board located at her work place, and when campaign material she had posted was removed. The Election Officer's investigation, conducted by Regional Coordinator Donald Twohey and the Washington, D.C. office of the Election Officer, revealed the following.

Michelle R. Argentine is a member of Local Union 912 and, since 1989, an employee of UPS at its facility on River Street in Santa Cruz, California. The Santa Cruz facility is scheduled to be closed on November 8, 1991. At the Santa Cruz UPS facility there are three bulletin boards located in an area around the hallway, between the employee restrooms, and near the time clock. One is a glass enclosed board used for company postings. Another board in the same area is assigned to the Union for official

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**Union business pursuant to Article 19 of the collective bargaining agreement between UPS and IBT. The third board is the one at issue here.**

**On August 3, 1991, Ms. Argentine sought to post campaign materials on the bulletin board provided Local Union 912. Local Union 912's representative, Joseph Fahey, told her that campaign materials, not being official Union business, could not--pursuant to the terms of collective bargaining agreement--be posted on the Union's bulletin board. Instead, Mr. Fahey told her to post the material on the third board located in the hallway area. On August 19, 1991, at approximately 8:00 a.m., Mr. Argentine did post campaign material on this third board. At approximately 8:15 a.m., she discovered the material had been removed; she attempted to post another copy. She was prevented from doing so by her supervisor, Cathy Foster, who informed her that the board could no longer be used for general purpose postings.**

**Ms. Argentine claims that during the period of her employment at the Santa Cruz facility, employees had used the third bulletin board located in the hallway area as a general purpose bulletin board. Vacation postcards, birth announcements, a lost pet notice, invitations to parties and weddings and the like, she claims, had been posted on that board. Ms. Argentine's statements are corroborated by UPS shop steward Judy Sanchez.**

**In late August/early September, 1991, Ms. Argentine claims a newspaper clipping concerning the business practices of a UPS competitor was posted on the board. She claims a lost dog notice was posted in September and remained undisturbed for at least one day. Finally, she claims that in October 1991, a picture of a man with an improperly overloaded handcart was posted. Ms. Sanchez stated that it was common practice for general purpose items such as postcards to be posted on this third bulletin board. Ms. Sanchez herself sent a postcard to the Santa Cruz UPS facility while on vacation at the end of July, 1991; when she returned to work, she found the card still posted on the bulletin board. Ms. Sanchez stated that although no specific permission to post general purpose materials on this board had ever been given to employees, neither had employees ever been instructed not to so use the board.**

**UPS officials claim that the bulletin boards, including this third bulletin board, are "policed" by UPS supervisory personnel. UPS claims that all materials which are official company or Union notices are immediately removed from the board. Ms. Sanchez admits that recently she has not seen any general purpose materials posted on the board. The Regional Coordinator, during the course of this investigation, personally inspected the board and found only official company notices posted.**

**Article VIII, § 10(d) of the *Rules* provides that "[n]o restrictions shall be placed upon candidates' or members' pre-existing rights to use employer or Union bulletin boards for campaign publicity." While the existence of an express prohibition, or the**

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absence of an express grant of permission may be important evidence in determining whether there is a pre-existing right of access to a bulletin board, this may not, in and of itself, be dispositive of the issue. A restricted bulletin board may have been transformed, through past practice, into a *de facto* general purpose bulletin board. In such a case, it would be violative of the *Rules* to prohibit the posting of campaign material on such boards. See, e.g., In Re: Hall, 90-Elec.App.-1; Helton v. NLRB, 656 F. 2d 883 (D.C. Cir., 1981). In addition, although such other permitted, though not formally approved postings have never included campaign materials, IBT members nonetheless have a right to use the bulletin board for campaign postings. Helton v. NLRB, supra; ABF Freight System v. NLRB, 673 F. 2d 229 (8th Cir., 1982).

As noted above, Ms. Argentine first had notice that UPS might or would prevent her from posting campaign materials in August 1991. She filed an unfair labor practice charge on this matter with the National Labor Relations Board in October 1991. Finally, on October 22, 1991, she filed the instant protest with the Election Officer. Further, the Santa Cruz is scheduled for closure on November 8, 1991. While the employees of the Santa Cruz will transfer to another UPS facility at that time, a practice established at the Santa Cruz facility with respect to bulletin boards at that facility would not be binding with respect to utilization of bulletin boards at another facility. See Advisory Regarding Political Rights, issued December 28, 1990.

Given the November 8, 1991 closure of the Santa Cruz facility, even if the Election Officer were to find a violation of the *Rules*, no meaningful remedy could be imposed. Accordingly, the Election Officer determines that it would not effectuate the purpose of the *Rules* to decide this protest on its merits and the protest is **DISMISSED** on that basis.

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,

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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/mjv

cc: Frederick B. Lacey, Independent Administrator

Donald E. Twohey, Regional Coordinator

Martin Wald, Esq.  
Schnader, Harrison, Segal & Lewis  
Suite 3600  
1600 Market Street  
Philadelphia, PA 19103