



OFFICE OF THE ELECTION OFFICER  
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Michael H. Holland  
Election Officer

November 11, 1991

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**VIA UPS OVERNIGHT**

David F. Darrah  
2551 Saga Circle, N.E.  
East Canton, OH 44730

Gus Nikolas  
President  
IBT Local Union 92  
1127 Ninth St., S.W.  
Canton, OH 44706

Jack Timberlake  
Richard Gilger  
c/o IBT Local Union 92  
1127 Ninth St., S.W.  
Canton, OH 44706

**Re: Election Office Case No. P-1044-LU92-CLE**

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules") by David F. Darrah, a member of Local Union 92. In his protest, Mr. Darrah contends that on November 3, 1991, in violation of the *Rules*, Union Vice-President Richard Gilger and Recording Secretary Jack Timberlake removed campaign materials that Mr. Darrah had the previous day posted on telephone poles in the vicinity of the Union hall. The Election Officer's investigation, conducted by Regional Coordinator Joyce Goldstein, revealed the following.

On November 2, 1991, Mr. Darrah posted approximately 12 "Elect Ron Carey" posters on poles owned by the Ohio Bell Telephone Company and located in the vicinity of the Union hall. He did so in anticipation of the Local Union membership meeting scheduled for Sunday, November 3, 1991 at 10:00 a.m. On November 3, 1991, Mr. Darrah found the posters still in place when he drove past the location at 8:45 a.m. However, upon his return at 9:45 a.m., he found that the posters had been removed from the poles. Mr. Darrah states that he was informed by Union members Larry McAtee and Harvey McNutt that they witnessed Messrs. Timberlake and Gilger remove the posters at 9:35 a.m.

Mr. McAtee informed the Election Officer that he and Mr. McNutt were in the vicinity of the poles on the morning of November 3. He and Mr. McNutt witnessed Mr. Timberlake and a second individual Mr. McAtee could not identify picking up green

papers off the ground in the area. Mr. McAtee could not identify the materials as Carey campaign posters, but assumed that was what they were when informed by Mr. Darrah that he had attached Carey posters to the poles. Contacted by the Election Officer, Messrs. Timberlake and Gilger denied removing the posters from the telephone poles or collecting papers off the ground near the telephone poles.

The telephone poles on which Mr. Darrah posted his campaign materials are the property of Ohio Bell Telephone Company. Ohio Bell employs few, if any IBT members. Even assuming that some IBT members are employed by Ohio Bell, the telephone poles here at issue are not located at any facility where such members work. While there appear to be no state statutes or local ordinances prohibiting the posting of materials on telephone poles, Ohio Bell claims that the poles are its private property and its policies prohibit such posting.

Article VIII, § 10(d) of the *Rules* prohibits restrictions from being placed upon IBT members' pre-existing rights to utilize the facilities of their employer or Union for campaign activities, including the posting of campaign literature. Clearly, improper removal by Union officials of properly posted campaign material is an action that violates not only the *Rules* but federal substantive law. The Union, no more than the employer, can prevent or impede such campaign activities. *Rules*, Article VIII, § 10(d); *NLRB v. Magnavox*, 415 U.S. 322 (1974); *Eastex, Inc. v. NLRB*, 437 U.S. 556 (1978); *District Lodge 91, IAM v. NLRB*, 814 F. 2d 876 (2nd Cir. 1987).

While the Election Officer has previously ruled that IBT members have no pre-existing right to engage in campaigning activities on the property of an employer where no IBT members are employed at the facility, See, e.g., Election Office Case No. P-865-LU745-SOU, he has had no occasion to determine whether the pre-existing rights of IBT members provided in Article VIII, § 10(d) extend to the property of employers --whether employers of IBT members or not--such as telephone poles. The facts as determined by his investigation of this case do not require that he make such a determination here and the Election Officer declines to do so.

The Election Officer's investigation failed to determine the identity of the individuals who removed the material posted by Mr. Darrah on the telephone poles. Mr. Darrah himself did not see the person who removed such material. His witnesses saw only two individuals--one of whom they identified as Mr. Timberlake--picking up material from the ground; they did not see who had removed the materials. Both Messrs. Timberlake and Gilger deny removing the posters Mr. Darrah had attached to the telephone poles. There is insufficient evidence to conclude that Messrs. Timberlake and Gilger engaged in the activity of removing the campaign posters from the telephone poles. The Election Officer investigation was unable to identify anyone else who might have done so.

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Accordingly, the protest is DENIED. Under these circumstances the Election Officer, as noted above, need not decide and does not decide whether removal of the campaign materials from the telephone poles would constitute a violation of the *Rules*.

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

Joyce Goldstein, Regional Coordinator  
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