



OFFICE OF THE ELECTION OFFICER  
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
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Washington, DC 20001

Michael H. Holland  
Election Officer

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November 20, 1991

**VIA UPS OVERNIGHT**

Al Szablak  
4793 Creaser Rd.  
Westmoreland, NY 13490

Terrence F. Majka  
Secretary-Treasurer  
IBT Local Union 182  
5 Rutger Park  
Utica, NY 13501

Victor C. Olivadoti  
IBT Local Union 182  
5 Rutger Park  
Utica, NY 13501

WKTV (Harron Communications)  
Sheldon Storrier, General Mgr.  
Smith Hill Rd.  
Utica, NY 13503

New York State Cable TV Commission  
Tower Building  
State Campus  
Albany, NY 12200

**Re: Election Office Case No. P-1067-LU182-PGH**

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Al Szablak, a member of Local Union 182. Mr. Szablak complains that his employer, WKTV, prevented him from posting campaign literature on a general purpose bulletin board located on WKTV premises.

This protest was investigated by Regional Coordinator William Kane. WKTV is a television station and employs IBT members represented by Local Union 182. The station, located in Utica, New York, contains several bulletin boards. One of these bulletin boards has been designated as an official Union bulletin board. The official Union bulletin board has been limited to official postings by the Local. It is located near a locker/photocopy room used by employees of the station. In addition to the official Union bulletin board, there is another bulletin board which is used by employees, the Union and the company for a variety of notices. There is no dispute that this bulletin board is a general purpose bulletin board; it has contained Union meeting notices,

company notices and unofficial notices posted by employees including "for sale" signs, service advertisements, notices of professional association meetings and invitations to participate in non-employment related social and other activities. This bulletin board is located near a food vending area in the station. Neither bulletin board is glass enclosed nor locked.

Mr. Szablak states that sometime in late October or early November of 1991, he observed that a portion of the Durham Unity Team campaign material which had been printed in The International Teamster had been photocopied and posted on the general purpose bulletin board. That posting remained on the bulletin board for a few days and then was removed. It was again posted and removed shortly thereafter. Mr. Szablak is unaware who posted or removed that piece of campaign material.

In response to that posting, Mr. Szablak posted a two-page press release from the Ron Carey Slate concerning the campaign literature which was published on its behalf in The International Teamster. Mr. Szablak initialed and dated the posting which remained posted, again for a few days.

Sheldon Storrier, General Manager of WKTV, removed the two-page press release from the bulletin board and returned it to Mr. Szablak with a memo -- dated November 8, 1991 -- stating that the bulletin board was not to be used for any political or cause-related postings. Aside from the receipt of the memorandum from Mr. Storrier, no action has been taken against Mr. Szablak for posting the Carey material.

Mr. Storrier maintains that company policy prohibits using the general purpose bulletin board for political purposes, whether related to public political issues or intra-Union political matters. Whenever Mr. Storrier sees political literature on the board, he removes it. The Local Union takes no position as to the propriety of posting campaign materials on the general purpose bulletin board. The Local maintains however that its bulletin board is for official Union postings only and has been historically so used; the Local is unwilling to permit its board to be used to post campaign literature.

Article VIII, § 10(d) of the *Rules* provides that no restriction shall be placed upon a members pre-existing rights to use employer or Union bulletin boards for campaign materials. Pre-existing rights include those rights established by substantive federal law. Thus, when a bulletin board on an 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 the right to use the bulletin board for campaign postings, subject to the regulations previously applied to "general purpose" postings, such as length of time material may remain posted, the dimensions of the postings, and the like. Helton v. NLRB, 656 F. 2nd 883 (D.C. Cir. 1981); ABF Freight System v. NLRB, 673 F. 2nd 229 (8th Cir. 1982).

Such regulations may not include restrictions concerning the content of postings to the extent the right to distribute the material is protected by substantive federal law. Although an employer may legitimately promulgate a rule prohibiting the distribution and posting of political materials relating to purely public political issues, it may not prohibit the distribution and/or posting of material that is substantially employment or Union related, although it may be political in nature. See Eastex, Inc. v. NLRB, 437 US 556 (1978), Union Carbide Corp. v. NLRB, 714 F. 2nd 657 (6th Cir., 1983), Texaco, Inc. v. NLRB, 462 F. 2nd 812 (3rd Cir., 1972, cert. denied, 409 U.S. 1008, 1972); NLRB v. Transcom Lines, 599 F. 2nd 719 (5th Cir., 1979). Thus, an employer may not prohibit postings with respect to public political issues which impact upon the Union, e.g. postings related to right to work legislation, minimum wage laws, and the like, and may not restrict postings concerning intra-Union political matters, such as postings relating to the 1991 IBT International Union officer election.

The Election Officer investigation clearly determined that the bulletin board located near the food vending area at WKTV is a general purpose bulletin board. Accordingly, WKTV may not prohibit posting on this bulletin board of campaign materials relating to the 1991 IBT International Union officer election and has violated the *Rules* by removing the material posted by Mr. Szablak.

Accordingly, the protest is GRANTED. To remedy this violation, the Election Officer directs WKTV to cease and desist from prohibiting the posting of campaign materials on the general purpose bulletin board located in its Utica, New York station and to affirmatively permit Mr. Szablak and other IBT members employed by it to post materials concerning the 1991 IBT International Union officer election on that board.<sup>1</sup> In accordance with Article X, § 2(z) of the *Rules*, an appeal shall not stay this determination.

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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<sup>1</sup> The investigation did not disclose any evidence that the official Union bulletin board has ever been used for posting of materials other than official Union notices; accordingly, there is no requirement that the Union permit that board to be used for campaign postings.

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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,

A handwritten signature in black ink, appearing to read "Michael H. Holland". The signature is written in a cursive, flowing style.

Michael H. Holland

MHH/ca

cc: Frederick B. Lacey, Independent Administrator

William B. Kane, Regional Coordinator (by Hand Delivery)

Walter Shea  
c/o Robert Baptiste, Esquire

R. V. Durham  
c/o Hugh J. Beins, Esquire

Ron Carey  
c/o Richard Gilberg, Esquire