

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 22, 1991

VIA UPS OVERNIGHT

Robert Henry
2 Braeside Road
Baldwinsville, NY 13027

James Howe
Secretary-Treasurer
IBT Local Union 1149
7272 Van Buren Road
Baldwinsville, NY 13027

Anheuser Busch, Inc.
Attn: James McGrane
Asst. Employee Relations Mgr.
2885 Belgium Road
Baldwinsville, NY 13027

Re: Election Office Case No. P-1085-LU1149-PGH

Gentlemen:

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"). In his protest Robert Henry alleges that his rights under the Election Rules were violated when management personnel of Anheuser Busch, Inc. removed campaign literature from the bulletin board and a table in an employee break room in its Baldwinsville, N.Y. production facility. The protest was investigated by Regional Coordinator William Kane. The Election Officer's investigation revealed the following.

Robert Henry is a member of IBT Local Union 1149 who is employed by Anheuser Busch, Inc. at its Baldwinsville, N.Y. production facility. Mr. Henry has been an active campaigner at the Baldwinsville facility for Ron Carey and the Ron Carey Slate of candidates for International Office in the IBT.

On November 13, 1991, James McGrane, an Assistant Employee Relations Manager, removed the Carey campaign literature posted by Mr. Henry from the bulletin board and also removed literature left by Mr. Henry on the table in the breakroom. The literature removed from the table included approximately ten (10) sheets of Carey literature left there by Mr. Henry and four (4) or five (5) sheets of Durham literature obviously placed on the table by someone other than Mr. Henry. Anheuser Busch contends that Mr. McGrane's conduct was consistent with an employer policy regarding the use of company bulletin boards and the prohibition against leaving literature

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unattended in the break room. The employer contends that this policy has been consistently enforced by Anheuser Busch and that it has not discriminated against the literature of any particular candidate or between campaign and non campaign literature. When unauthorized literature, i.e. not official company material, is found either posted or left in the break room it is removed and discarded by Anheuser Busch.

Mr. Henry alleges that he has placed campaign literature in the break room in the past without objection from the employer. In addition, Mr. Henry alleges that Anheuser Busch has posted literature concerning the United Way Campaign and American Red Cross blood bank donations on the bulletin board in the break room and that literature for these company sponsored charities is available in the breakroom itself. The employer denies that United Way or blood bank literature is left in the break room.

The Election Officer and the Independent Administrator have long recognized that IBT members cannot be denied access to company or union bulletin boards, even boards that are subject to established policies limiting their use, if there is evidence that employees have used such boards for general purpose employee posting in the past. Such a past practice will transform a restricted board into a general purpose board available for the posting of campaign literature. See, e.g., In Re: Hall, 90-Elec. App.-1.

In the instant case the bulletin board in question is a company bulletin board and the United Way and Red Cross blood bank posting were made by the employer for an employer sponsored company charity. In an analogous situation, the National Labor Relations Board and the Federal Courts have held that an employer's policy restricting employee solicitation, including union solicitation, while permitting employer sponsored charitable solicitation was not violative of the Section 8(a)(1) of the National Labor Relations Act. Serv-Air, Inc. v. NLRB, 395 F. 2d 557 (10th Cir. 1968), on remand 175 NLRB 801 (1969); Emerson Electric, 187 NLRB 294 (1970); Saint Vincent's Hospital, 265 NLRB No. 6 (1982).

Posting notices for employer sponsored charities on a bulletin board does not transform an official bulletin board in to a general purpose bulletin board. The *Rules*, and particularly Article VIII, §10(d), only requires IBT members to have access to bulletin boards on employer premises in accord with prior practice or substantive law, i.e., general purpose bulletin boards. Because the Election Officer finds no evidence that the company bulletin board in the break room was used for general purpose employee posting he concludes that it was not violative of the *Rules* for Anheuser Busch to remove campaign literature from that board.

Mr. Henry clearly has a right to pass out campaign literature in the break room on non-work time. Neither the employer nor the Union can prevent such campaign

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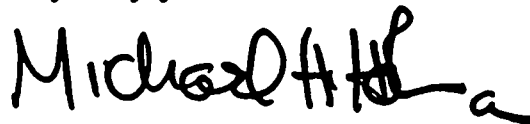
activities. See, Election Officer Advisory on Political Rights; NLRB v. Magnavox, 415 U.S. 322 (1974); Eastex, Inc. v. NLRB, 437 U.S. 556 (1978); District Lodge 91, International Association of Machinists v. NLRB, 814 F.2d 876 (2nd Cir. 1987); NLRB v. Methodist Hospital of Gary, Inc. 732 F.2d 43 (7th Cir. 1984); United Aircraft Corp., 139 NLRB 39, enforced 324 F. 2d 128 (2nd Cir. 1963), cert. denied, 376 U.S. 951 (1964). However, there is an important difference between personally handing out literature to members and leaving quantities of literature in a non-work area for employees to pick up. See, e.g. In Re: Jack Hafling and United Parcel Service, Election Office Case No. P-978-LU135-SCE, aff'd 91-Elec. App.-221(SA)(leaving campaign literature unattended in locker room protected because of evidence of past practice).

In the instant case the Election Officer credits Mr. Henry's statement that he has placed campaign literature in the breakroom in the past. However, that testimony is not inconsistent with the employer's statement that when it does find unauthorized literature that literature is removed or discarded. While Mr. Henry may have placed literature in the break room, and that literature may have remained there for a period until discovered and removed by the employer, such evidence does not establish a clear past practice nor prove that the employer's policy has not been consistently enforced.

In light of the forgoing the instant protest is DENIED.

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
Election Officer

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cc: Frederick B. Lacey, Independent Administrator

William B. Kane, Regional Coordinator

John F. Ring, Esq.
Morgan, Lewis & Bockius
1800 M Street, N.W.
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the break room including the table-like surface over the trash receptacle at the entrance. Mr. Henry filed an election protest over this event, maintaining that the removal of the campaign literature was contrary to a long standing practice at the Baldwinsville facility of permitting employees to communicate with each other by leaving all types of literature in the break room.


Upon investigation the Election Officer found that Anheuser Busch had an established policy of removing unattended materials left in the break room whenever such materials came to the attention of its managers. The Election Officer further determined that while Mr. Henry may have been correct in his assertion that he was able to leave campaign literature in the break room in the past, that position is not inconsistent with Anheuser Busch's representation that it removed such material whenever its managers discovered it. Accordingly the Election Officer concluded that, while Mr. Henry may have placed his literature for distribution as he claimed, Anheuser Busch removed such material immediately upon detection. Based upon this the Election Officer decided that there was no past practice permitting IBT members to leave unattended material in the break room as Mr. Henry claimed.

Mr. Henry presented a written petition signed by twenty employees which he claimed supported his assertion that Anheuser Busch had always allowed the placement of literature in the break room. The petition, however, does not contradict the Election Officer's finding that Anheuser Busch had a policy of removing such

material whenever it was discovered. Moreover, at the hearing before me, Mr. Henry himself conceded that he could not dispute the fact that management removed any unattended material whenever they became aware of it.

In sum, nothing presented at the hearing before me contradicts the Election Officer's finding that Anheuser Busch maintains and enforces a policy of discarding employee literature left in the break room as soon as it is discovered. Thus, the past practice claimed to be in existence by Mr. Henry has not been established.¹

For the foregoing reasons, the Election Officer's decision is affirmed in all respects.



Frederick B. Lacey
Independent Administrator
By: Stuart Alderoty, Designee

Dated: December 3, 1991

¹ Nothing in Anheuser Busch's policy or the Election Officer's finding would prevent Mr. Henry from personally distributing material on non-work time in the break room or from posting literature on the bulletin board in the information center in the brewery which has been set aside for that purpose.