

OFFICE OF THE ELECTION OFFICER  
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
25 Louisiana Avenue, NW  
Washington, DC 20001

Michael H. Holland  
Election Officer

(202) 624-8778  
1-800-828-6496  
Fax (202) 624-8792

October 11, 1991

**VIA UPS OVERNIGHT**

Dennis J. Nagle  
13 Bourne Avenue  
Attleboro, MA 02703

IBT Local Union 25  
544 Main Street  
Boston, MA 02129

Ron Carey  
c/o Richard Gilberg, Esquire  
Cohen, Weiss & Simon  
330 West 42nd Street  
New York, NY 10036-6901

Richard Kirlehan  
864 Belmont St.  
Watertown, MA 02173

United Parcel Service  
1045 University Avenue  
Norwood, MA 02062

**Re: Election Office Case No. P-903-LU25-ENG**

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Dennis J. Nagle, a member of Local Union 25. Mr. Nagle alleges that on September 14, 1991 Robert Lassard, a member of Local 25 and an employee of United Parcel Service ("*UPS*") was told by Local Union steward Richard Kirlehan that he could not post campaign material on the bulletin board at the company's Norwood, Massachusetts facility.

This protest was investigated by Regional Coordinator Elizabeth Rogers. There are two bulletin boards at the Norwood premises. One is a designated company bulletin board and the other is a designated Union bulletin board. Both boards are glass-enclosed and locked. During the delegate election, the Union bulletin board was used for the posting of campaign materials.

Richard Kirlehan, the Norwood Local Union steward, states that the campaign postings were not done "legally," that is individuals not authorized to have keys obtained keys to the bulletin board and posted the campaign materials. Mr. Kirlehan acknowledges, however, that the materials remained posted throughout the delegate campaign period and were never removed, nor was their removal sought, by the Union or the company.

Recently, and after to the delegate election, the company and the Union decided to limit permissible postings on this board to official Union notices. The lock on the bulletin board was changed and only one key was made available to the Union, which key is in the possession of Mr. Kirlehan as the Union steward.

Article VIII, § 10 of the *Rules* prohibits the placement of restrictions upon candidates or members pre-existing rights to engage in campaign activities on employer premises or use general purpose bulletin boards located in employer premises for campaign postings. Pre-existing rights are those afforded by substantive law or established as a result of past practices.

The investigation of this protest revealed that both the company and the Union have previously permitted the posting of campaign materials on the Union bulletin board. During the delegate election, campaign materials were so posted without objection. Whether the posting was initially accomplished surreptitiously or improperly, the fact remains that the materials so posted throughout the delegate election period. Neither the company nor the Union can now eliminate that right while the International Union election process continues. See, e.g., Helton v NLRB 656 F.2d 883 (D.C. Cir., 1981).

Thus, the Election Officer determines that neither the Union, through its steward or otherwise, or UPS may prevent the posting of materials related to the 1991 IBT International officer election on the Union bulletin board at UPS's Norwood facility without violating the *Rules*. To the extent that Mr. Lassard was prevented from posting 1991 International officer election campaign materials on such board, the *Rules* were violated and this protest is GRANTED.<sup>1</sup> The Election Officer directs that the Union and

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<sup>1</sup> The Election Officer would note, however, that the materials sought to be posted, with a single exception -- a composite of newspaper articles with labels advocating the election of Ron Carey for IBT General President -- are not campaign materials related to the 1991 International Union officer elections. The jurisdiction of the Election Officer is limited to the delegate and officer election processes. The Election Officer does not have jurisdiction over Local Union elections. The other campaign literature which Mr. Lassard sought to post are campaign materials for the "Right to Vote Slate," a slate of candidates seeking Local Union office in Local 25's upcoming Local Union officer election. The Election Officer makes no finding as to whether the *Rules* have been violated by the refusal to permit the posting of that literature or whether IBT members

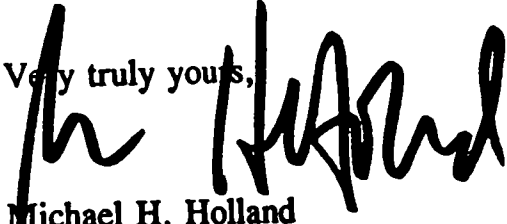
Dennis J. Nagle  
Page 3

UPS allow campaign material related to the 1991 International officer election to be posted on the Union bulletin board at the Norwood UPS facility. The Union steward in possession of the bulletin board key shall open the board on request to allow the posting of campaign materials for the International officer election.

To help ensure that all IBT members employed at Norwood are aware of their rights, the Election Officer further directs that the Local Union post the attached notice on the Norwood UPS Union bulletin board within seven days of the date of this letter. Such notice shall remain posted through December 10, 1991. The Local Union shall also forward an affidavit to the Election Officer, within seven days of the date of this letter, confirming that the required notice has been posted.

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/mjv

cc: Frederick B. Lacey, Independent Administrator

Elizabeth A. Rodgers, Regional Coordinator

R. V. Durham  
c/o Hugh J. Beins, Esquire  
Beins, Axelrod, Osborne  
& Mooney  
2033 K St., NW  
Suite 300  
Washington, D.C. 20006-1002

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have the right to post such literature, since he has no jurisdiction to do so.

Dennis J. Nagle  
Page 4

Walter Shea  
c/o Robert Baptiste, Esquire  
Baptiste & Wilder  
1919 Pennsylvania Avenue, N.W.  
Suite 505  
Washington, D.C. 20006

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

**NOTICE TO TEAMSTER MEMBERS**

**FROM MICHAEL H. HOLLAND, ELECTION OFFICER, IBT**

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 materials on the Union bulletin board located at this facility.

It is a violation of the *Election Rules* for any company official, Union officer, business agent, steward, or member to remove campaign postings.

A handwritten signature in black ink, appearing to read "Michael H. Holland", written over a horizontal line.

**MICHAEL H. HOLLAND**  
Election Officer, IBT

***This is an official notice and must remain posted until December 10, 1991 and must not be altered, defaced, or covered with any other material.***

25/ENG

IN RE:

DENNIS J. NAGLE

and

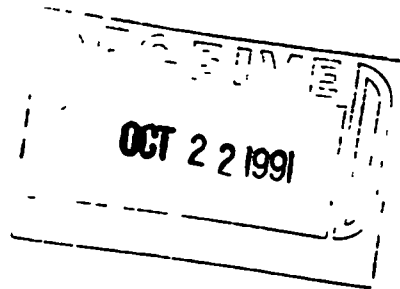
UNITED PARCEL SERVICE

and

IBT LOCAL UNION NO. 25

91 - Elec. App. - 201 (SA)

DECISION OF THE  
INDEPENDENT ADMINISTRATOR



This matter arises as an appeal from a decision of the Election Officer in ~~Case No. P-99-000000000~~. A hearing was held before me by way of teleconference at which the following persons were heard: Dennis Nagle, the complainant; Robert Lassard a political ally of Mr. Nagle; John Sullivan, on behalf of the Election Officer; Elizabeth Rodgers, a Regional Coordinator; Nicholas N. Price, an attorney with United Parcel Service ("UPS"); and Sophia Davis, for Ron Carey and his Slate. The Election Officer also submitted a written summary in accordance with Article XI, Section 1.a.(7) of the Rules For The IBT International Union Delegate And Officer Election (the "Election Rules").

At issue is the right to post campaign material relating to the upcoming International officer elections on a bulletin board located at the Norwood, Massachusetts, UPS facility. In its Norwood facility, UPS maintains two glass-enclosed bulletin boards; one is used by UPS for posting seniority lists, the other is for

the Union's use. Mr. Nagle alleges that UPS prevented Mr. Lassard from posting campaign material on the Union bulletin board.

Article VIII, Section 10.d. of the Election Rules provides:

[N]o restrictions shall be placed upon candidates' or members' pre-existing rights to use employer or Union bulletin boards for campaign publicity.

In an Advisory Regarding Political Rights issued on December 28, 1990, the Election Officer affirmed the rights of IBT members to engage in campaign activity and to have reasonable access to their fellow members. Essentially, IBT members enjoy all rights provided by the past practice of a particular facility. The Advisory specifically observed that "neither the Union nor the employer can change or limit bulletin board usage."

The Election Officer's investigation here revealed that campaign materials were posted on the Union bulletin board, without objection from the Union or UPS, during the IBT delegate election. The Election Officer's finding was corroborated by the statements of Messrs. Nagle and Lassard made at the hearing before me. Accordingly, the Election Officer found that because UPS and the Union had allowed campaign material to be posted without objection in the delegate election a "past practice" had been established, and that practice could not be changed during the course of the International officer election.

UPS challenged the Election Officer's findings.<sup>1</sup> UPS alleged

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<sup>1</sup> UPS also raised objections to the jurisdiction of the Election Officer and of the Independent Administrator to exercise authority  
(continued...)



that its long standing policy is that Union bulletin boards are to be used solely to post official Union notices. In addition, UPS asserted at the hearing before me that each time campaign material was placed on the Union bulletin board during the delegate election, it was removed as soon as it was discovered. I find it telling, however, that despite the fact that UPS was given the opportunity to present such evidence to the Election Officer during his investigation, it failed to do so. Moreover, UPS' assertions in this regard are inconsistent with the Election Officer's corroborated findings.

The Election Officer's findings regarding the past access to the Union bulletin board are further supported in the record. It is undisputed that after the delegate elections a meeting occurred between a Local 25 Shop Steward and UPS representatives. During that meeting it was agreed that, in the future, the Union bulletin board's use would be restricted to official Union business. Pursuant to that agreement, the lock on the bulletin board was changed and the Steward was the only Local 25 member given a key. This clearly demonstrates that a new enforcement policy regarding the bulletin board was formulated after the delegate elections.

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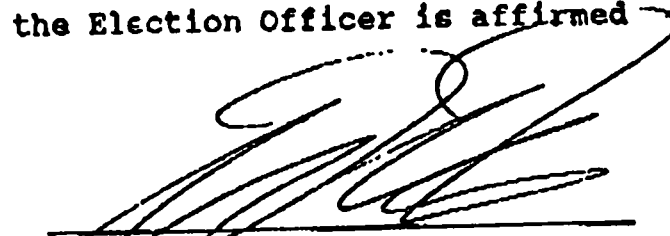
<sup>1</sup>(...continued)

over UPS in this protest. These objections are without merit. It is now well settled that the Election Officer and the Independent Administrator have jurisdiction over employers to enforce the provisions of the Election Rules. See In Re: McGinnis, 91 - Elec. App. - 43 (January 23, 1991), aff'd, United States v. IBT, 88 Civ 4486, slip. op. at pp. 3-7 (S.D.N.Y. April 3, 1991).

It would seem that the agreement reached between UPS and the Local was designed to chill the free exchange of political views regarding the International officer elections. It is this very type of relationship between UPS and the Local that the Honorable David N. Edelstein warned about in United States v. IBT, 88 Civ. 4486 (DNE), slip op. at p. 6 (S.D.N.Y. April 3, 1991). As Judge Edelstein stated, "[e]mployers may have developed comfortable relationships with incumbent IBT officers, and may not be anxious for new, and perhaps more assertive union representatives."

In summary, as the Election Officer's investigation revealed, the past practice of the Local and UPS clearly allowed for the posting of campaign material on the Union bulletin board. That past practice must guide the use of the Union bulletin board during the International officer election.

Accordingly, the decision of the Election Officer is affirmed in all respects.<sup>2</sup>

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

Dated: October 22, 1991

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<sup>2</sup> I also adopt the Election Officer's caution that he has made no finding as to whether the Election Rules have been violated by the refusal to permit the posting of literature which is not connected to the International officer elections. As the Election Officer correctly observed, he has no jurisdiction to rule on issues concerning other literature -- such as campaign material related to Local 25's upcoming Local Union officer election.

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% INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
25 Louisiana Avenue, NW  
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Fax (202) 624-8792

Michael H Holland  
Election Officer

Chicago Office:  
% Cornfield and Feldman  
343 South Dearborn Street  
Chicago, IL 60604  
(312) 922-2800

November 5, 1991

**VIA UPS OVERNIGHT**

Dennis J. Nagle  
13 Bourne Avenue  
Attleboro, MA 02703

IBT Local Union 25  
544 Main Street  
Boston, MA 02129

Ron Carey  
c/o Richard Gilberg, Esquire  
Cohen, Weiss & Simon  
330 West 42nd Street  
New York, NY 10036-6901

Richard Kirlehan  
c/o IBT Local Union 25  
544 Main Street  
Boston, MA 02129

Robert N. Lessard  
844 Plymouth Street  
Middleboro, MA 02346

United Parcel Service  
1045 University Avenue  
Norwood, MA 02062

**Re: Election Office Case No. P-903-LU25-ENG,  
affirmed 91-Elec.App.-201  
(Compliance)**

Gentlemen:

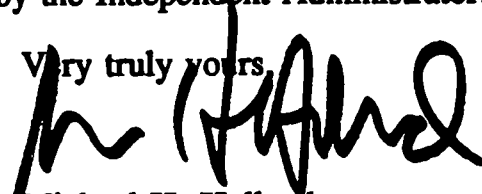
The Election Officer issued his decision in the above matter by letter dated October 11, 1991. The decision was affirmed by the Independent Administrator on October 22, 1991. By letters dated November 2, 1991, Dennis J. Nagle and Robert N. Lessard contend that United Parcel Service ("UPS") is failing to comply with the Election Officer's decision as affirmed by the Election Officer. Specifically, the letters contend that UPS has refused to permit the notice ordered to be posted by the Election Officer in his decision to be posted on the Union bulletin board has been removed by UPS supervisory or managerial officers. Further, the letters contend that UPS is refusing to permit campaign material to be posted on said board.

By a letter dated November 4, 1991 from Nicholas N. Price, counsel for UPS, UPS affirmatively states that it will comply with the decision on the above matter, as affirmed by the Independent Administrator, and will take no steps to interfere with the postings permitted or ordered by that decision, i.e., the posting of the notice or the posting of campaign materials. A copy of said letter is enclosed. Based on the

Dennis J. Nagle  
November 5, 1991  
Page 2

foregoing, the Election Officer concludes that UPS has complied with his prior decision in this matter, as that decision was affirmed by the Independent Administrator.

Very truly yours,



Michael H. Holland

MHH/mjv

cc: Frederick B. Lacey, Independent Administrator

Elizabeth A. Rodgers, Regional Coordinator

R. V. Durham  
c/o Hugh J. Beins, Esquire  
Beins, Axelrod, Osborne  
& Mooney  
2033 K St., NW  
Suite 300  
Washington, D.C. 20006-1002

Walter Shea  
c/o Robert Baptiste, Esquire  
Baptiste & Wilder  
1919 Pennsylvania Avenue, N.W.  
Suite 505  
Washington, D.C. 20006

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

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-v-

INTERNATIONAL BROTHERHOOD OF  
TEAMSTERS, CHAUFFEURS,  
WAREHOUSEMEN AND HELPERS OF  
AMERICA, AFL-CIO, et al.,

Defendants.

ORDER

88 CIV. 4486 (DNE)

EDELSTEIN, District Judge:

WHEREAS United Parcel Service ("UPS"), an employer of members of the International Brotherhood of Teamsters ("IBT"), has appealed six decisions of the Independent Administrator concerning protests filed under the Election Rules for the IBT International Union Delegate and Officer Election (the "Election Rules"); and

WHEREAS the Government argues that these appeals are moot; and

WHEREAS these six decisions affirmed decisions of the Election Officer finding that UPS had violated the Election Rules; and

WHEREAS all six decisions involved the rights of IBT members to campaign in connection with the recently completed International Union Officer Election; and

WHEREAS the remedies imposed were limited to the campaign period for International Union Officer Election, which ended on December 10, 1991 -- the date by which mail ballots had to be received by the Election Officer in order to be counted, see International Union Officer Election Plan, Art. II; and


WHEREAS UPS could have timely appealed before the close of the campaign period, see Election Rules, Art. XI, §1(a)(8), but did not do so; and

WHEREAS these appeals, which challenge the imposition of remedies no longer in effect, are moot;

IT IS HEREBY ORDERED that UPS's appeals are dismissed as moot.

SO ORDERED.

Dated: December 20, 1991  
New York, New York

  
U.S.D.J.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA, :  
 :  
 Plaintiff, :

-v-

INTERNATIONAL BROTHERHOOD OF :  
 TEAMSTERS, CHAUFFEURS, :  
 WAREHOUSEMEN AND HELPERS OF :  
 AMERICA, AFL-CIO, et al., :  
 :  
 Defendants.

ORDER

88 CIV. 4486 (DNE)

-----X

EDELSTEIN, District Judge:

United Parcel Service, Inc. ("UPS") has moved this Court pursuant to Local Civil Rule 3(j) for reargument of this Court's December 20, 1991 order, which dismissed as moot UPS's appeal from six decisions of the Independent Administrator. These decisions concerned the campaign rights of members of the International Brotherhood of Teamsters (the "IBT") in connection with the recently concluded International Union officer election.

Local Civil Rule 3(j) provides that a motion for reargument shall set forth concisely the "matters or controlling decisions which counsel believes the court has overlooked." This Court enunciated the standard governing motions to reargue as follows:

The strong interests in finality and the procedural directions of Local General Rule 9(m) [Rule 3(j)'s predecessor] lead this court to conclude that the only proper ground for a motion for reargument is that the court has overlooked "matters or controlling decisions" which, had they been considered, might reasonably have altered the result reached by the court.

United States v. International Business Machines Corp., 79 F.R.D.

412, 414 (S.D.N.Y. 1978). This has been adopted as the governing standard. See Morser v. AT&T Information Systems, 715 F. Supp. 516, 517 (S.D.N.Y. 1989); Adams v. United States, 686 F. Supp. 417, 418 (S.D.N.Y. 1988); Ashley Meadows Farm, Inc. v. American Horse Shows Ass'n, Inc., 624 F. Supp. 856, 857 (S.D.N.Y. 1985). This stringent standard is necessary to "dissuade repetitive arguments on issues that have already been considered fully by the court." Caleb & Co. v. E.I. DuPont de Nemours & Co., 624 F. Supp. 747, 748 (S.D.N.Y. 1985). A party moving under Rule 3(j) may not submit new facts, issues or arguments. See Travellers Ins. Co. v. Buffalo Reins. Co., 739 F. Supp. 209, 211 (S.D.N.Y. 1990).

All of the matters and controlling decisions proffered by UPS in this motion were considered by this Court in issuing its December 20, 1991 order. There is no actual controversy at this stage of appellate review. See Roe v. Wade, 410 U.S. 113, 125 (1973). UPS's appeals are therefore moot.

UPS has only itself to blame for not obtaining prompt judicial review of the Independent Administrator's decisions, the last of which was issued on November 14, 1991. If UPS had promptly appealed any of the Independent Administrator's decisions, it would have received a decision well before the close of the election campaign on December 10, 1991. However, UPS delayed until November 24, 1991 before filing an appeal, which this Court rejected as fatally vague on December 2, 1991. UPS did not file a proper appeal until December 6, 1991, four days before the close of the election campaign.



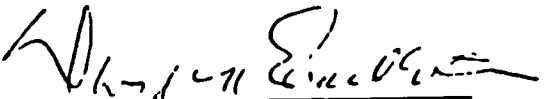
UPS next argues that the issues presented in the appeals are capable of repetition, yet evading review. UPS's argument that the issues presented in its appeals will recur is purely speculative. Even if the 1996 election is governed by the Election Officer, the election may be governed by a completely different set of rules. Further, even if the 1996 Election is governed by the Election Officer and the same rules apply, there is no reason that UPS would be unable to obtain judicial review at that time. See DeFunis v. Odegaard, 416 U.S. 312, 318-319 (1974) ("just because this particular case did not reach the Court until the eve of the petitioner's graduation from law school, it hardly follows that the issue he raises will further evade review"). Thus, while the issues decided against UPS in 1991 might be capable of repetition in 1996, there is no reason that the issues they present will evade review.

Finally, UPS argues that if this Court determines that UPS's appeals are moot, it should vacate the Independent Administrator's decisions as moot, rather than dismiss UPS's appeals as moot. While vacatur might have been appropriate had UPS diligently prosecuted its appeal, it did not do so. Instead, UPS "slept on its rights" and rendered its appeal moot by its own inaction. See United States v. Munsingwear, 340 U.S. 36, 41 (1950).

Accordingly, UPS's motion to reargue is denied in all respects.

SO ORDERED

DATED: *July 23*, 1992  
New York, New York

  
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U.S.D.J.