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Election Officer

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December 26, 1990

VIA UPS OVERNIGHT

Walter W. Henao
210 Covena Avenue
Modesto, CA 95354

Kraft General Foods
CVC Division
705 E. Whitmore Avenue
Modesto, CA 95352

Ron Ashlock
Secretary-Treasurer
IBT Local 748
1222 "I" Street
Modesto, CA 95354

Re: Election Office Case No. P-106-LU748-CCV

Gentlemen:

A pre-election protest was timely filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules"). The protestor, Walter W. Henao, alleged that he had been directed by supervisory employees of Kraft General Foods, CVC Division, in Modesto, California, where he had been engaged in campaign activities with respect to the IBT International Union Delegate and Officer Election, to leave the property of the company and not to return.

The Election Officer's investigation determined that Mr. Henao, while a IBT member and a member of IBT Local 748, is not an employee of Kraft, CVC or the other subsidiary of Kraft located in the same compound, Post Foods. The Election Officer's investigation also determined that Mr. Henao, as he alleged, was engaged in campaign activity in the employee parking lot of Kraft General Foods, CVC Division and was instructed by supervisory employees to leave. The Election Officer's investigation determined that he was told by such supervisory employees to completely exit from the property of Kraft General Foods; any campaign activity in which he wished to engage would have to be undertaken on the public thoroughfare, Whitmore Avenue, or the gravel sidewalk adjacent to such thoroughfare.

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The Election Officer's investigation determined that CVC Division of Kraft Food is located within a compound wherein both CVC and Post Foods have facilities. One enters into such compound via an access road, owned by Kraft General Foods and on its property, which leads from Whitmore Avenue. This private road extends for approximately 100 yards and terminates at a guard shack and gate, which gate leads to both the CVC and the Post facilities. In addition, there is a second entry way off this private access road to the CVC facilities; the second access road is located approximately 10 yards from the intersection of Whitmore Avenue and the private access road.

Union members have the right, protected by §7 of the National Labor Relations Act, 29 U.S.C. §157 to engage in inter-Union campaign activities. District Lodge 91, International Association of Machinist v. NLRB, 125 LRRM 2021, (2nd Cir. 1987); NLRB v. Methodist Hospital of Gary, Inc., 116 LRRM 2327 (7th Cir. 1984); ABF Freight System v. NLRB, 109 LRRM 3151, (8th Cir. 1982). When members, who are not employees of the particular employer, have no adequate means of engaging in such communications, employers must accommodate those rights. Jean Country, 291 NLRB, No. 4, (1988). Each case requires that the right to communicate be balanced against the employer's private property right. The means of communication must be practical, that is, not overly costly or time consuming, and must permit direct, as opposed to written, access. At the same time, the property rights of the employer are to be preserved to the greatest extent possible. National Maritime Union v. NLRB, 130 LRRM, 2641, (2nd Cir. 1989); Leshmere v. NLRB, 135 LRRM 2329 (1st Cir., 1990).

In accordance with the following principles, and given the configuration of the property here at issue, the Election Officer determines that appropriate access would permit members of the IBT not employed by Kraft General Foods at its Modesta, California CVC or Post locations, to have access for campaign activities to the private road leading from Whitmore Avenue to the CVC and Post locations. The campaigning member would have the ability to reach members employed at either CVC or Post. Kraft General Foods property rights would be preserved in that no access is given to the fenced-in portions of the CVC or Post compound other than the access road.

Kraft General Foods, by appropriate managerial personnel has indicated to the Office of the Election Officer that it is willing to accommodate non-employee access to its Modesta, California facility in the manner outlined above. IBT members are hereby notified that the shift changes at CVC at 7:00 a.m., 3:30 p.m. and 11:00 p.m. and at Post at 7:20 a.m., 3:50 p.m. and 11:20 p.m. IBT

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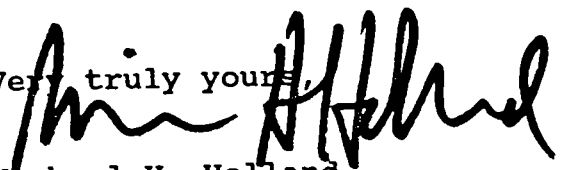
members not employed by Kraft General Foods at its Modesta, California, Whitmore Avenue facility are urged to confine their campaigning activities in or around such times.

Campaigning at the shift change times will afford IBT members access to members employed at the Kraft General Foods facilities while minimizing safety problems with semi-trailer trucks. To the extent that IBT members feel it necessary to engage in campaign activities on the private access road at times other than shift change times, they are hereby reminded of the inherent safety problems and further notified that Kraft General Foods properly may require, absent a waiver by them of Kraft's liability for harm that may befall them, to change their campaigning sites to accommodate the safety issues.

Kraft General Foods has also requested that IBT members not employed by it notify Ray Greer, an employee of the CVC Division located at 705 East Whitmore Avenue, Modesta, California, phone number: (209) 538-5480, prior to such members' entry onto Kraft's private property. The Election Officer finds that the request for such notification is not unreasonable, noting that there is no requirement that this notification be given at any particular time period prior to the entry, and therefore directs IBT members to so comply.

If any person is not satisfied with this determination, he may request a hearing before the Administrator within twenty-four (24) hours of his receipt of this letter. Such request shall be made in writing and shall be served on Administrator Frederick B. Lacey at LeBoeuf, Lamb, Leiby & MacRae, One Gateway Center, Newark, N.J. 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. 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.

Very truly yours,


Michael H. Holland

cc: Mr. Frederick B. Lacey
Local Union 386
Janet Morris, Esq., Kraft General Foods, Inc.
Kraft Court
Glenview, Illinois 60025