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February 15, 1991

VIA UPS OVERNIGHT

Walter W Henao
210 Covena Ave
Modesto, CA 95354

Ron Ashlock
Secretary-Treasurer
IBT Local Union 748
1222 "I" St.
Modesto, CA 95354

Con Agra - Consumer Frozen Food Company
107 South Kilroy Road
Turlock, CA 95381

Re: Election Office Case No. P-435-LU748-CCV

Gentlemen.

A pre-election protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules") In his protest, the complainant Walter Henao alleges that Con Agra, an employer employing members of 748, violated Article VIII of the *Rules* by preventing him from distributing campaign literature to Con Agra employees on company property in the employee parking lot

The investigation conducted by the Election Officer discloses the following facts Mr Henao is a member of 748 and is a delegate candidate in Local 748's delegate and alternate delegate election Mr Henao is not an employee of Con Agra, or any subsidiary of Con Agra The Con Agra plant is located at 107 South Kilroy Road in Turlock, California Mr Henao is employed by Tri-Valley Number Seven and works in Modesto, California

The investigation conducted by the Election Office discloses that the Con Agra plant is situated in a rural area, on a relatively quiet street The employee parking lot is located directly adjacent to the plant and is sufficiently large enough to accommodate over two hundred vehicles The parking lot is surrounded by fences and the plant walls and is completely enclosed except for three single lane entrances and two single lane exits The parking lot is separated from Kilroy Street by a grassy area and a wide sidewalk. Kilroy Street itself is not a busy thoroughfare.

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On February 1, 1991, Mr. Henao entered the employee parking lot at the Con Agra Plant at 107 South Kilroy Road in Turlock, California for the purposes of distributing campaign literature. Shortly thereafter, Mr. Henao was approached by a Con Agra security guard who informed him that it was against company policy to allow any form of Union campaigning on company property. Mr. Henao states in his protest that Mr. Bruce Harms, Con Agra's Plant Controller, also approached him that day and informed him that company policy restricted his access to company property for purposes of campaigning.

On February 7, 1991, Mr. Henao again tried to distribute literature to Con Agra employees leaving the parking lot and was again ordered to leave the premises by a security guard employed by Con Agra. On February 7, 1991, Walter Kintz, Election Officer Representative, met with Mr. Harms, the Plant Controller, and Mr. Schell, the Security Guard Sergeant for the purpose of investigating the protest. At the meeting, Mr. Harms again stated that company policy requires that no non-employees be allowed in the employee parking lot. This rule has been uniformly enforced for many years.

However, in further discussions between Con Agra and the Office of the Election Officer, the company agreed that Mr. Henao and other non-employee IBT members have the right to campaign on the sidewalk which is adjacent to the parking lot. Con Agra has further agreed to permit non-employee IBT members to distribute campaign literature to employees as they exit and enter the employee parking lot in their vehicles so long as the non-employee IBT members remain on the sidewalk and grassy area directly beyond the fence and entrance and exit gates.

Article VIII of the *Rules* provides that non-employee IBT members have certain rights to participate campaign activities. The campaign rights of members not employed by the employer include the right to have reasonable access to the target of the activities, i.e., fellow IBT members. National Maritime Union v. NLRB, 867 F.2d 767 (2nd Cir. 1989). Thus, where the location of the employer's facility prevents face-to-face contact with the IBT members who work there, private property rights must yield to a limited right of access. See Advisory on Political Rights (IBT Election Officer, Michael H. Holland, December 28, 1990).

In accordance with the above stated principles and given the configuration of the property which is at issue here, the Election Officer determines that access at the entrance and exit gates to the employee parking lot on the sidewalk and grassy area between the fenced-in parking lot and Kilroy Street provides adequate access in accordance with Article VIII of the *Rules*. The Election Officer determines that Mr. Henao is therefore not entitled to campaign inside the fenced gates to the employee parking lot area of Con Agra.

Accordingly, Mr. Henao's protest concerning his right to campaign on company property inside the parking lot area is DENIED. However, this decision expressly

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reaffirms the right of Mr Henao and all other IBT members to engage in campaigning at the entrance and exit gates at the Con Agra facility.

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/mca

cc Frederick B Lacey, Independent Administrator
Donald E Twohey, Regional Coordinator