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March 6, 1991

**VIA UPS OVERNIGHT**

James J Cox  
2344 Debra Ave  
E Petersburg, PA 17520

Jay W McKinney  
Secretary-Treasurer  
IBT Local Union 771  
1025 N Duke Street  
Lancaster, PA 17602

Ken C Laukhuff  
President  
IBT Local Union 771  
Lancaster, PA 17602

Skyline Distribution  
c/o Ralph Arnold  
1905 Horseshoe Rd  
Lancaster, PA 17601

Crowley Foods  
c/o John Carroll  
1801 Hempstead Rd  
Lancaster, PA 17604

Miller & Hartman Co , Inc  
c/o Rod Struble  
180 Greenfield Rd  
Lancaster, PA 17601

**Re: Election Office Case No. P-473-LU771-PHL**

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") The protestor is a nominated candidate for delegate to the 1991 IBT International Convention from Local 771 He protests the refusal of three employers employing Local 771 members to permit him access to their premises for purposes of engaging in campaign activities He also protests the conduct of Local 771 and its Secretary-Treasurer and President

Subsequent to the filing of the protest, Skyline Distribution, affiliated with Acme Market, Inc , agreed, consistent with the Election Officer's position, that access would be provided to IBT members not employed by it, such as Mr Cox, to its parking lot for purposes of engaging in campaign activities All such members are to notify managerial personnel of the facility of their intent to enter the facility for campaigning purposes Campaigning should be limited to shift change times No campaigner is to impede vehicular traffic or otherwise block entrance or egress to the facility

Similarly, Miller & Hartman Company has agreed, again consistent with the Election Officer's position, to permit campaigning in its parking lot by IBT members not employed by Miller & Hartman. Again, all such members are to notify the company of their intent to engage in campaigning activity in the parking lot.

Crowley Foods, however, has refused to permit access to its property for campaigning purposes by IBT members not employed by it. Crowley Foods' premises comprise approximately forty-seven acres. Cox requested permission to distribute campaign literature at the access gate to the facility, which is located about 1/4 mile from the public road outside the company's property. This access gate is located several hundred yards from a second sliding gate. One must first pass through the access gate and then the sliding gate to gain access to the actual facility, i.e., parking lot and buildings.

Crowley refuses to permit any access to any portion of its property by any IBT member not employed by it. The company suggested that campaigning be done in the parking lot of the convenience store located along the public thoroughfare, approximately 1/4 mile from the access gate. No reason was advanced for this refusal to permit any access other than safety and proprietary security issues. No explanation was given with respect to the security issues, the second gate through which one must pass after passing the access gate to gain access to the actual facilities effectively resolves any security problems. Similarly, no explanation was offered as to any circumstances which might cause a hazardous condition, the Election Officer investigation did not disclose that a safety problem would be posed by permitting campaigning at the access gate.

The *Rules* permit IBT members, even those employed by a different employer or at a different location of the same employer, limited rights of access in order to engage in campaign activities. Article VIII, § 10 (d) of the *Rules* provides that all IBT members have pre-existing rights to engage in campaign activities at employers' premises. Among such pre-existing rights is the right to access for non-employees if, without such access, meaningful campaign contact is denied. In such cases, the employer's private property right must yield to a limited right of access. Jean Country 291 NLRB No. 4 (1988), National Maritime Union v. NLRB, 867 F.2d 767 (2d Cir. 1989), Lechmere v. NLRB, 914 F.2d 313 (1st Cir. 1990).

Since such access for the purposes of engaging in campaign activities is a necessary prerequisite to fulfillment of the election process mandated by the *Rules*, and the decisions of the United States District Court for the Southern District of New York upon which the *Rules* are based, the Election Officer has the authority to assert jurisdiction over employers of IBT members in order to insure that the campaigning access mandated by the *Rules* is allowed. Yellow Freight Systems, Inc., 91-Elec App - 43 (January 23, 1991) affirmed United States District Court for the Southern District of New York (March 4, 1991).

The Election Officer's investigation in this case determined that there is no reasonable means of access to the members employed by Crowley Foods by IBT

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members not so employed without limited access to Crowley Foods' property. Crowley Foods has not articulated, and the Election Officer's investigation did not uncover, any safety or security problems that would arise by granting such access. Therefore, Cox's protest is GRANTED with respect to Crowley Foods. Crowley Foods is hereby ordered to permit Cox and other IBT employees not employed by it to engage in campaign activities on its property at the access gate and along the road leading from the public thoroughfare to such access gate.

In accordance with the foregoing, the protest is RESOLVED with respect to Skyline Distribution and Miller & Hartman Company and the protest is GRANTED with respect to Crowley Foods.

The second protest is that the Union has not posted or timely posted the results of the nomination meeting on all Union bulletin boards. An investigation disclosed that the Local Union officers distributed the results to approximately sixty stewards for posting on some ninety bulletin boards at employer worksites. Apparently, by January 24, 1991, 10 days after the nominations meeting, all notices were posted. Mr. Cox did not identify, and the Election Office did not find, any sites where the notices were not posted. The Election Officer has concluded that the Local Union officials were and are making a good faith effort to insure that the results are posted and remain posted.

Based on the foregoing, I deny this protest.

Mr. Cox has withdrawn the third part of his protest against the Union.

The fourth part of the protest is that campaign materials are being removed, defaced and altered. Mr. Cox was unable to provide the Election Officer with any facts relating to such alleged violations. The Union officers denied any complicity in or knowledge of notices being defaced, altered or removed. The Election Officer's investigation uncovered no evidence of any such occurrence. Accordingly, the protest is DENIED.

In the fifth part of his protest against the Union, Mr. Cox contends that he was subjected to harassment and called vulgar names by Mr. McKinney and Mr. Laukhuff. The subject matter of this protest was also protested by Mr. McKinney and Mr. Laukhuff. I have discussed the details of the incidents involved in my decision on that protest (see P-466-LU771-PHL), and incorporate them herein. As stated in that decision, I recognize the participants to be strong adversarial partisans in an election campaign. Accordingly, I do not find grounds in this conduct to support a violation of the *Rules* but admonish the participants to attempt to behave in a more civil manner in the future.

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

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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  
Peter V Marks, Sr , Regional Coordinator