

OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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Election Officer

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October 10, 1991

VIA UPS OVERNIGHT

John H. Rischman
19-05 22nd Rd.
Astoria, NY 11105

Anthony Rumore
President
202 Summerfield St.
Scarsdale, NY 10583

Pepsi-Cola Bottling Co. of New York
Attn: Labor Relations Department
9701 Ave. D
Brooklyn, NY 11236

Re: Election Office Case No. P-941-LU812-NYC

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules") by John H. Rischman, a member of Local Union 812 and a Local 812 shop steward at the Avenue D, Brooklyn, New York facility of the Pepsi Cola Bottling Company of New York. The protest alleges that supervisors at the Pepsi Cola plant removed campaign literature that Mr. Rischman had posted on the Local 812 bulletin board and near various time clocks at the plant. He also complained that the company changed the locks on the Union bulletin boards and refused to give him a key even though he, as a local union steward, has traditionally been provided a key to the bulletin boards. The protest was investigated by Regional Coordinator Amy Gladstein.

Investigation revealed that the local Union bulletin boards have been used historically only for the posting of official Union notices. Even Mr. Rischman admits that prior to him posting the campaign material which was removed by Pepsi-Cola supervisory personnel, the bulletin board had only been used for official communications.

Pepsi-Cola acknowledged that it removed the campaign material posted by Mr. Rischman from the bulletin board and changed the lock to the board in order to ensure that no further campaign material would be posted. The company did not give Mr. Rischman a key, apparently to prevent him from posting additional campaign material on the bulletin board. The company is now, however, willing to return the key to Mr. Rischman provided that he does not post any campaign material on the bulletin board.

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Pepsi-Cola also acknowledges that it removed campaign literature which was posted in and around the time clocks in the plant. It says it did so because it does not want any "political" material in the plant. The Election Officer investigation revealed that the area around the time clocks has been used for the posting of all types of materials; posting in those areas has not been limited to official postings. For instance, thank-you notes, "for-sale" signs, notices involving non-work-related events, and the like have been posted and remain posted in the area around the time clocks without interference by either the Union or Pepsi-Cola.

Article VIII, §10(d) of the *Rules* states that "[no] restrictions shall be placed upon candidates' or members' pre-existing rights to use employer or Union bulletin boards for campaign publicity." In the Advisory Regarding Political Rights, issued by the Election Officer on December 2, 1990, the Election Officer stated "neither the Union nor the employer can change or limit bulletin board usage. Thus, where a bulletin board on the employer's premises has been used to post materials other than, or in addition to, official Union or employer notices, and even though such postings have never included campaign postings, IBT members have a right to use the bulletin board for campaign postings, subject to the regulations previously applied to "general purpose" postings, such as length of time the material may remain posted, the dimensions of the posting, and the like. Helton v. NLRB, 656 F. 2d 883 (D.C. Cir., 1981); ABF Freight System v. NLRB, 673 F. 2d 229 (8th Cir., 1982)."

In this case, the Union bulletin boards have not previously been used for anything other than official Union notices; that is, prior to this incident neither personal notices nor campaign notices were ever posted on these locked boards. Accordingly, under the *Rules*, neither Mr. Rischman nor any other IBT member employed by Pepsi-Cola has the right to post campaign material on such boards.

Pepsi-Cola has, as indicated above, agreed to provide Mr. Rischman with a key to the Union bulletin boards, provided that campaign material is not posted on those boards. Since the Election Officer has found that IBT members employed by Pepsi-Cola have no pre-existing right to use the Union bulletin boards for posting of campaign materials, Mr. Rischman also has no such right. Since the company has agreed to provide him with a key to the board that portion of his protest relating to the company's failure to do so earlier is deemed to be resolved.

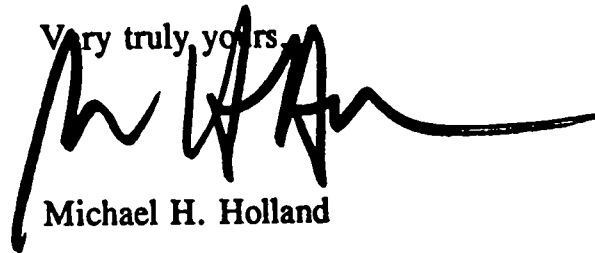
With respect to the area around the time clocks at the Pepsi-Cola facility, the Election Office investigation revealed that that area had traditionally been used for general purpose postings. Accordingly, IBT members employed by Pepsi-Cola, including Mr. Rischman, have a right to utilize those areas of the plant for campaign postings. Pepsi-Cola is directed to refrain from interfering with any campaign materials posted in and

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around the time clocks of its Brooklyn, New York facility.¹

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/ca

cc: Frederick B. Lacey, Independent Administrator
Amy Gladstein, Regional Coordinator

¹ While the instant protest does not specifically raise the right of IBT members to engage in campaign activities--other than posting--in non-work areas during non-work times, the company indicated during the investigation that its policy prohibited any political campaigning on company premises. All parties are reminded that campaigning in non-work areas on non-work time is specifically permitted under substantive federal law and is therefore a pre-existing right within the meaning of Article VIII, § 10(d) of the *Rules*. NLRB v. Magnavox, 415 US 322 (1974); Eastex Inc. v. NLRB 437 US 556 (1978).