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Michael H Holland
Election Officer

October 14, 1991

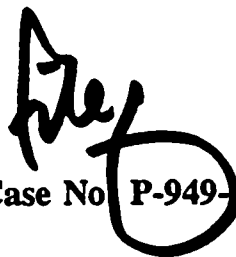
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VIA UPS OVERNIGHT

Lawrence M. Farkas
510 Munro Avenue
Mamaroneck, NY 10543

Anthony Rumore
President
IBT Local Union 812
202 Summerfield Street
Scarsdale, NY 10583

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



Re: Election Office Case No P-949-LU812-NYC

Gentlemen:

This is a protest filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*"). The protester, Lawrence Farkas, is a member of IBT Local 812 and also a member of the Teamsters for a Democratic Union ("TDU"). He supports the Ron Carey Slate in the upcoming IBT International Officer elections. His protest concerns a speech given by IBT Local 812 President Anthony Rumore at a Local Union meeting on October 3, 1991 as well as the general conduct of that meeting. The meeting was a general membership meeting. The protest was investigated by Regional Coordinator Amy Gladstein.

Mr. Farkas is a known political activist in Local Union 812. He is known as a member of TDU and an active supporter of the Ron Carey Slate. He attended the October 3, 1991 general membership meeting with John Rischman, also a known supporter of the Ron Carey Slate. All other members at the meeting, approximately 80 in number, support Mr. Rumore and his political positions; Mr. Rumore supports General President candidate Walter Shea and the members of the Shea-Liguorotis Action Team slate. Mr. Farkas and Mr. Rischman sat apart from the other members attending the meeting; after they arrived and were seated, no other member sat down near or beside them.

At the October 3, 1991 meeting, Mr. Rumore made an approximately 35 minute political speech relating to the 1991 IBT International Union officer election. His speech focused on General President candidates R. V. Durham and Ron Carey. In the words

of his counsel, Mr. Rumore "did speak about Messrs. Durham and Carey and told his membership his thoughts about them and what he knows about them. All his thoughts, and all the knowledge he conveyed, were negative. Mr. Rumore stated that Mr. Durham was responsible for Local 812 members being deprived of strike benefits. He suggested that Mr. Carey's concern was only for IBT members employed by United Parcel Service. He stated that Mr. Carey's Local Union members did not have adequate health and pension coverage. Again, in the words of his counsel, Mr. Rumore "indicated his thinking with reference to certain matters that affected the membership of Local 812"; that thinking was that the members should not support or vote for Messrs. Durham or Carey or the members of their respective slates.

~~Mr. Rumore also made negative comments about TDU during the meeting, the organization that Mr. Farkas was known to support. He stated that certain IBT members in New Jersey - members of a Local whose officers were known as supporters of TDU - received only \$10.00 an hour. He raised the subject of meetings which Mr. Farkas conducts on Sunday mornings, calling them "Sunday morning sermons." He directly referred to Mr. Farkas by name during his speech. At one point, Mr. Rumore said that the executive board of the Union had to defend itself against "guys like Farkas."~~

During the time that Mr. Rumore was making his political speech, the meeting was loud and boisterous with all the members, other than Messrs. Farkas and Rischman, indicating support for Mr. Rumore, his remarks and his political positions. The members at the meeting loudly applauded, cheered, stamped their feet, whistled, etc. Mr. Rumore made no effort to control the outbursts. Mr. Farkas states that during one of the outbursts, occurring immediately after Mr. Rumore stated that the executive board had to defend itself against "guys like Farkas," one of the members yelled, "Kill him!" Mr. Rumore denied hearing that statement and Mr. Farkas admits that it is possible - given the noise - that Mr. Rumore did not hear the remark.

The evidence clearly demonstrates that Mr. Rumore used the October 3, 1991 general membership meeting of Local Union 812 for campaigning purposes. Negative campaigning is campaigning. Further, Mr. Rumore informed the members of the candidate he preferred for International Union President and extolled Mr. Shea for his activities and positions at the International Convention. Even if Mr. Rumore had not mentioned by name the candidate for General President whom he supports would not make his 35 minute speech any less a campaign speech.

Prior to the October 3, 1991 meeting, no candidate or candidate representative was notified that the meeting was to include campaign speeches. No time was allotted by the Local for IBT members, whose political positions are different from Mr. Rumore's, to address the membership meeting. The atmosphere of the meeting was such that it was to be expected that supporters of candidates on the Ron Carey Slate or the R. V. Durham Unity Team slate would not seek spontaneously to address the

membership. The use by Mr. Rumore of the Local Union 812 general membership meeting of October 3, 1991 for campaigning purposes on behalf of Walter Shea and the candidates on the Shea-Liguoris Action Team slate without providing an equal opportunity for supporters of other candidates for IBT International Union office violates the *Rules*.

A more difficult issue is presented by the allegations that Mr. Rumore threatened Mr. Farkas and Mr. Rischman. There is also no dispute that Mr. Rumore made extremely negative statements about both Mr. Carey and TDU at the October 3 meeting. Messrs. Farkas and Rischman are both known as supporters of Ron Carey as well as TDU members and/or supporters. Indeed, Mr. Rumore specifically referred to Mr. Farkas by name when commenting about Mr. Carey and TDU. There is also no dispute that Mr. Rumore's statements caused whistling, clapping and cheering by the members in attendance at the meeting, outbursts which Mr. Rumore made no effort to control. Mr. Rumore's campaign speech excited the crowd at the Union meeting in a manner hostile to Messrs. Farkas and Rischman, the only members in attendance who did not support Mr. Rumore. Mr. Rumore made no effort to control the boisterousness.

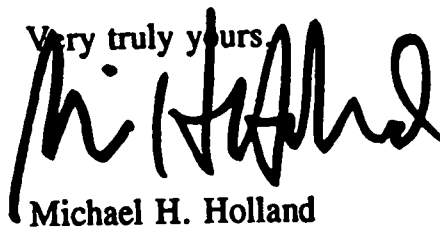
The intimidating atmosphere created by this improper speech cannot be undone. This conclusion follows even if Mr. Rumore did not intend the effects of his speech. The purpose of the *Rules* and of the Consent Decree is to create an open and free atmosphere for an uncoerced, free, fair and honest election among IBT members. The atmosphere created at the meeting, whether intended or not, runs squarely contrary to that purpose and thus justifies the remedial measures set forth below. See In Re Pizzuto, Election Case No. P-169-LU560-NJE (March 15, 1991), affirmed 91-Elec. App.-110 (SA) (March 27, 1991), cf. Morris, The Developing Labor Law, 329 (BWA) (Vol. I, 1982) (citing cases where activities of third parties unrelated to employer poisoned atmosphere necessary for fair election under the National Labor Relation Act); AC Long Inc., 173 NLRB 447, 69 LRRM 1366 (1968) (election set aside due to climate of "fear and disorder" even when could not be proven that either Union or employer was actually responsible for climate).

For all these reasons, the protest is GRANTED. To help eradicate the climate of intimidation created by the conduct of the October 3, 1991 general membership meeting of Local 812, Local Union President Rumore shall sign the attached notice within seven days of the date of this decision. The notice, once signed, shall within that same seven-day period be duplicated by Local 812 and mailed by Local 812 by first-class mail to the entire Local 812 membership. Local 812 shall within three days thereafter submit an affidavit to the Election Officer demonstrating that the notice was signed by Mr. Rumore and duplicated and mailed by Local 812 to the entire Local Union 812 membership.

To remedy the improper campaigning which occurred at the October 3, 1991 general membership meeting, Local 812 shall be required to duplicate and mail to its membership campaign literature on behalf of the Ron Carey Slate and the R. V. Durham Unity Team slate.¹ Each slate shall prepare and deliver to Local 812 the literature it wishes Local 812 to distribute on its behalf. The literature so provided shall be no longer than one sheet, 8" x 11," suitable for mailing in a tri-fold format. A copy of the literature shall be provided by each slate to the Election Officer at the time it submits the literature to Local Union 812. Within seven days of receiving the literature from each slate, Local 812 shall duplicate the material submitted and separately mail it to all Local 812 members. Within three days thereafter, Local 812 shall submit an affidavit to the Election Officer denoting the name of the slate on whose behalf literature was submitted for mailing and demonstrating that it has accomplished the mailing for such slate as required.

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

cc: Frederick B. Lacey, Independent Administrator

¹ Given the atmosphere of the Local 812 general membership meeting of October 3, 1991, and the failure of Local Union President Rumore to control the outbursts at that meeting, the Election Officer concludes that any remedy other than mailing would be meaningless.

Amy Gladstein, Regional Coordinator

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Beins, Axelrod, Osborne
& Mooney
2033 K St., NW
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Washington, D.C. 20006-1002

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

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

NOTICE TO ALL IBT MEMBERS LOCAL UNION 812

All members of Local 812 have a right to participate in the 1991 IBT International Union elections. All Local 812 members have a right to support any candidate or slate of candidates in such election and actively campaign on behalf of the candidate(s) of their choice. I will not threaten or retaliate against any Local 812 member for their participation in the International Union officer election, nor for their choice of candidate(s) to support in such election. Similarly, no other officer, business agent, steward or member of Local 812 may threaten or retaliate against any other member of this Union because of such member's political posture with respect to the 1991 IBT International Union officer election. Threats and retaliation are totally inappropriate and will not be tolerated or permitted by Local 812. Such activity and all like or related activities, including any type of coercion, will be prosecuted to the fullest extent possible, both internally within the Union and by referral to Charles Carberry, the Court-appointed Investigations Officer.

**Anthony Rumore
President, Local 812**

IN RE:	:	91 - Elec. App. - 210 (SA)
LAWRENCE M. FARKAS	:	
and	:	
ANTHONY RUMORE	:	DECISION OF THE
and	:	INDEPENDENT ADMINISTRATOR
IBT LOCAL UNION 812	:	

This matter arises as an appeal from the Election Officer's decision in Case No. P-949-LU812-NYC. A hearing was held before me by way of teleconference at which the following persons were heard: John J. Sullivan and Barbara Hillman for the Election Officer; Amy Gladstein, the Regional Coordinator; Louis Nikolaidas for the complainant, Lawrence M. Farkas; Anthony Rumore, President of Local Union 812; Susan Martin and Sidney Fox for Local 812; Susan Davis for the Committee to Elect Ron Carey; Patrick Szymanski for the Durham Unity Team; and John H. Rischman, a member of Local 812. Mr. Farkas appeared in person. The Election Officer submitted a written Summary in accordance with Article XI, Section 1.a.(7) of Rules for the IBT International Union Delegate and Officer Election ("Election Rules"). In addition, Ms. Martin made a written submission on behalf of Local 812, Mr. Rischman furnished a letter detailing his position and Mr. Rumore offered a set of affidavits signed by members of Local 812.

Mr. Farkas is a member of IBT Local Union 812, a member of Teamsters for a Democratic Union, and a supporter of Ron Carey's candidacy for International General President. He contends that Mr. Rumore, Local 812's President, used the Local's general membership meeting of October 3, 1991, to campaign in favor of Walter Shea and to attack the campaigns of R.V. Durham and Ron Carey. Messrs. Shea and Durham are also running for the position of International General President.

In addition, it is alleged that Mr. Rumore used the meeting to publicly attack Mr. Farkas and that through his actions Mr. Rumore permitted or inspired boisterous and threatening conduct by the members in attendance. The result of all of this, Mr. Farkas suggests, is that he felt intimidated, harassed and threatened. The protest thus alleges two types of Election Rules violation -- impermissible campaigning and the infringement of the free exercise of political rights.

IMPERMISSIBLE CAMPAIGNING

Under Article VIII, Section 4.a.(3) of the Election Rules, all candidates and campaigns must be treated equally with respect to attendance at Local Union meetings and the right to engage in campaign activities at such meetings. When a meeting is used for campaigning, all candidates must be notified that the opportunity is available and all must be given equal opportunity to address the membership. Moreover, if Union facilities -- including meetings -

- are used for campaign purposes, the facilities must be made "equally available to all candidates and all candidates [must be] notified in advance of the availability of such goods and services." Election Rules, Article VIII, Section 10.c.

The Election Officer found that Mr. Rumore had, in effect, turned the October 3 meeting into a one-party political rally, thus violating the above cited sections of the Election Rules. Mr. Rumore's address disparaged the candidacies of Durham and Carey and made plain Mr. Rumore's support of Mr. Shea. His remarks drew cheers, applause, whistles, and foot stomping from the members present who were bolsterous in their approbation of their president's comments. No advance notice was given that the meeting would be used or was otherwise available as a political forum. No opportunity was provided for other candidates or their supporters to address the meeting.

Mr. Fox was present at the hearing before me in the dual role of attorney on behalf of Local 812 and witness. While describing the events at the meeting, which he attended, he stated that he did not hear Mr. Rumore mention Shea. Mr. Rischman, who was also at the meeting, stated that he too did not hear Mr. Rumore mention Shea. Mr. Farkas, however, stated that he had a clear recollection that Mr. Rumore had informed those in attendance that he had served as a floor "whip" for Shea at the 1991 International Convention. There is no doubt that Mr. Farkas presented himself as the most

credible witness, as Mr. Rumore himself, when asked directly, admitted that he had made the reference to being a "whip" for Shea.

In any event, I am hesitant to credit any of Mr. Fox's factual statements, as his precarious dual role as advocate and witness may have blurred his recollection. I am also inclined to discount much of Mr. Rischman's testimony. At the hearing before me he stated that the letter he furnished, which purported to set forth his version of events, was drafted by Ms. Martin after she interviewed him and that he had read it quickly and signed it. At the hearing, he retreated from the letter to the extent it suggested that Mr. Farkas was lying or that the Election Officer had not properly investigated the matter. Mr. Rischman's oral presentation at the hearing was not as clear, emphatic or convincing as were the remarks Ms. Martin had penned for him in his letter.

Finally, it is also necessary to scrutinize carefully the affidavits offered by Mr. Rumore. Sixty-five identical affidavits were submitted from persons who attended the meeting.¹ Apparently, Mr. Rumore had the affidavits prepared and then had them distributed by Shop Stewards who contacted the members individually for their signatures. The use of the Union machinery in this way renders all of the affidavits suspect. In any event, the affidavits all admit that Mr. Rumore "mentioned Messrs. Durham and Carey and he made some remarks about them."

¹ In total, 80 persons attended the meeting.

As the only neutral factfinder in the process, the Election Officer's findings are entitled to deference. Moreover, my assessment of the post-investigation evidence and my evaluation of the witnesses that made presentations at the hearing corroborates the Election Officer's findings. Accordingly, there is no basis for reversing the Election Officer's determination here. Despite post hoc efforts to characterize the October 3 meeting as something other than what it was, it is clear that Mr. Rumore improperly used that meeting for partisan campaign purposes.

In addition, I find the remedy ordered by the Election Officer -- a mailing at the Local's expense for the other candidates -- to be a reasonable and well-balanced approach to redress the violation found.

THE INTIMIDATION FACTOR

Also of serious concern, is the intimidation of Mr. Farkas at the meeting. It is undisputed that, at one point, an unidentified member shouted "kill him," referring to Mr. Farkas. That statement was made on the heels of Mr. Rumore glaring at Mr. Farkas and saying "I'll take care of you later." After the meeting, as Mr. Farkas was waiting outside for his ride, two members emerged from the building with one pointing to Mr. Farkas and stating "that's him." Understandably, Local 812 attempted to portray Mr. Farkas as the odd man out, arguing that no one else felt intimidated. In making this argument, the Local relies on the sixty-five affidavits

and the statements of Mr. Rischman, himself a Carey-supporter. Local 812 portrays the meeting as just another spirited Union gathering. The point the Local misses is that it does not matter if anyone else but Mr. Farkas felt threatened. Mr. Rumore made Mr. Farkas the object of the crowd's antagonism. No one was seated between Mr. Farkas and the podium where Mr. Rumore stood. Mr. Farkas and Mr. Rumore had direct eye contact and Mr. Rumore, through his words and conduct, was, in effect, turning Mr. Farkas into a political leper. The members were enthusiastically responding to Mr. Rumore's remarks about Mr. Farkas and, as noted, one even shouted "kill him."

Under these circumstances, it is simply implausible to assert that this meeting did not have the effect of intimidating Mr. Farkas and chilling his expression of his political views. Indeed, Mr. Farkas and Mr. Rischman had intended to pass out Carey campaign literature after the meeting, but decided against it based on what had transpired at the meeting.²


Threats and intimidations of this type -- even when directed at only one IBT member -- are serious. As Judge David N. Edelstein has noted, the intent of the Election Rules is to "guarantee honest, fair, and free elections completely secure from harassment, intimidation, coercion, hooliganism, threats or any variant of

² Even Mr. Rischman, who himself stated he did not feel threatened, admitted that he could not speak as to how Mr. Farkas felt, and could not say Mr. Farkas was "lying" when he (Farkas) said he felt threatened.

these no matter under what guise." U.S. v. IBT, 742 F. Supp. 94, 97 (S.D.N.Y. 1990). It is, therefore, absolutely imperative that Mr. Rumore, through the distribution of a notice, affirm the rights of Local 812 members to engage in political activity without fear of intimidation or coercion, as the Election Officer has ordered. In addition, Mr. Farkas should not hesitate to report any further reprisals against him as a result of his pursuing this protest. If any retaliatory action is taken against Mr. Farkas, appropriate action will be taken, including reporting such conduct to the United States Attorney's Office and the Investigations Officer.

CONCLUSION

For the forgoing reasons, the decision of the Election Officer is affirmed in all respects.



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

Dated: October 24, 1991