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Michael H Holland
Election Officer

October 30, 1991

VIA UPS OVERNIGHT

Bruce Blake
1101 West Road
LaHabra Heights, CA 90631

William Rose
Certified Grocers of CA
2601 Eastern Avenue
Los Angeles, CA 91731

Jim Santangelo
Secretary-Treasurer
IBT Local Union 848
9960 Baldwin Place
El Monte, CA 91731

Jerome L. Vercruse
Secretary-Treasurer
IBT Local Union 630
750 S. Stanford Avenue
Los Angeles, CA 90021

Re: Election Office Case No. P-953-LU848-CLA

Gentlemen:

A protest was filed pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*"). In his protest, Mr. Bruce Blake alleges that his rights under the *Rules* were violated by his employer, Certified Grocers of California ("Certified"), and by his Local Union because he was denied access to bulletin boards at his work place for the posting of campaign material and that material he had posted was improperly removed. The Election Officer's investigation, conducted by Regional Coordinator Geraldine Leshin and the Washington, D.C. office of the Election Officer, revealed the following.

Bruce Blake is a member of Local Union 848 and an employee of Certified at its facility on Eastern Avenue in Los Angeles, California. The facility consists of a series of offices, warehouses and loading docks. The largest building at the facility is the mechanized warehouse. The unionized employees at this facility are represented by IBT Local Unions 630 and 848. Local Union 848 represents the drivers and Local Union 630 represents the warehouse employees.

There are a number of bulletin boards located throughout the facility. These boards are designated as either union or company boards. The Election Officer was unable to determine the existence of designated "general purpose" bulletin boards. Most of the Union bulletin boards are either used by Local Union 630 or 848. However,

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several of the boards are shared by the Locals. The boards vary in size. Some of the boards are glass enclosed; some are uncovered.

The use of union bulletin boards is the subject of a provision of the collective bargaining agreement between Certified and the Union. Article XIV of the agreement between the Union and Certified provides that the union bulletin "shall be used exclusively for authorized union notices."

On or about October 4, 1991, Blake was informed by his employer that he could no longer post campaign material on the union bulletin boards. At approximately the same time Blake was informed by Local Union 848 business agent Rick Middleton that he, Middleton, had removed campaign material that was "jamming" the board. The Local Union 848 business agent also cited the provision of the collective bargaining agreement governing bulletin board use to justify his action in removing Blake's literature.

During the course of the investigation of this protest, Jim Santangelo, the Local Union 848 Secretary-Treasurer, informed the Election Officer that three weeks prior to the filing of the protest he had a conversation with William Rose, a Certified labor relations official, who expressed his concern over the presence of campaign literature on union bulletin boards. Santangelo informed Rose that he would make sure that the campaign material was removed.

There is no recent history of contested elections in Local Union 848. The election for delegates from Local Union 848 to the 1991 IBT International convention was uncontested, as were recent Local Union officer elections. In contrast Local Union 630 has had recent contested elections for Local Union officers in December, 1990, with a rerun held in June, 1991 and a contested election for delegates to the 1991 IBT International Convention in March, 1991.

In each of these contested elections enumerated above, campaign literature has been posted on union bulletin boards throughout the Certified facility. Campaign material has been posted on the union bulletin boards near the grocery salvage loading dock, outside of the transportation department office in the mechanized warehouse, and on bulletin boards in two break rooms located in the mechanized warehouse. In addition, campaign literature for the International Officer election, including notices for a campaign appearance at the Certified facility by R.V. Durham and members of his slate, has been posted on Union bulletin boards.

Evidence regarding how long the campaign material stayed on the boards was conflicting. One witness informed the Election Officer that campaign literature was not removed by the company but by supporters of other candidates. Another witness stated that the employer policing of the union bulletin boards was "haphazard at best" and that some unofficial, not Union, literature remained posted for long periods of time. A labor relations official of the employer informed the Election Officer that nonunion material is prohibited on union bulletin boards and that supervisory officials are instructed to remove such literature. When asked specifically about the bulletin boards in the break room in the mechanized warehouse, the manager appeared to be unaware of the existence of bulletin boards in those break rooms and stated that he had not been in those break rooms for six or seven months.

As part of his implementation of the 1991 International Union Officer Election Plan approved by the Federal Court, representatives of the Election Office inspected all Union bulletin boards at the Certified facility to insure that the Election Officer's Notice of Election was posted. This inspection was discussed with Certified by a representative of the Election Officer who informed the employer that he wanted to inspect all union bulletin boards at the facility. An appointment was made and the inspection was conducted in the presence of the facility's employment manager. While the inspection was conducted after prior notice--providing Certified with an opportunity to remove non-official postings from the bulletin boards--the representative of the Election Office found at least one piece of literature posted which was neither an official company or Union posting; he noted the posting of an announcement for a Teamsters for a Democratic Union ("TDU") meeting in one of the employee break rooms in the mechanized warehouse.

Article VIII, § 10(d) of the *Rules* provides that "[n]o restrictions shall be placed upon candidates' or members' pre-existing rights to use employer of Union bulletin boards for campaign publicity." Certified and Local Union 848 argue that the use of the union bulletin boards is governed by the collective bargaining agreement between the employer and the IBT. That agreement prohibits the posting of literature, other than official Union literature on Union bulletin boards.

While the existence of a contractual prohibition on the use of union bulletin boards for campaign publicity is important evidence in determining whether there is a pre-existing right of access to the bulletin board, it may not be dispositive of the issue. The de jure restricted union bulletin board may have been transformed through past practice into a de facto general purpose bulletin board. In such case it would be violative of the *Rules* to prohibit the posting of campaign material on such boards even in light of the contractual prohibition on such posting. See, e.g., In Re: Hall, 90-Elec. App-1 (The Union violated the *Rules* when it attempted to enforce a contractual ban on posting campaign literature on Union bulletin boards where there was evidence that such boards had been previously used for non-Union postings); Helton v. NLRB, 656 F. 2d 883 (D.C. Cir. 1981) (Union committed unfair labor practice when it refused to allow

employees to post materials critical of union on the union's bulletin board, despite collective bargaining prohibition on such posting, where it was found that such prohibition had not been enforced in the past); Container Corp. of America, 244 NLRB No. 53, 102 LRRM 1162 (1979) (Employer violated federal labor laws when it removed union's newsletters from bulletin boards and threatened employee with disciplinary action for any reposting of newsletters, since workers in past used bulletin boards to post personal and union notices without policing by employer); Vincent's Steak House, 216 NLRB 647 (1975) (An employer interfered with protected rights by removing an article about union picketing over another restaurant's rule that waitresses appear happy, since the bulletin board on which the notice was posted had always been available for personal use, in spite of a rule to the contrary).

While there is evidence that there have been non-Union postings, including campaign postings, on numerous union bulletin boards located throughout the Certified facility, there is a conflict in the evidence regarding how long these postings remained up. In order to constitute a clear past practice, the posting must have remained posted in spite of the actual knowledge of Certified officials, or remained posted for such a period that such knowledge, and resulting acquiescence, can be inferred. It appears, however, that the campaign and other non-official Union postings remained posted for extended periods in the two employee break rooms located in the mechanized warehouse. This finding is supported not only by the testimony of numerous witnesses who were interviewed during the course of the investigation, but by the inspection of these boards by Election Office personnel. The existence of a TDU meeting notice on a bulletin board in the break room, even after the employer was informed that the Election Officer was coming to inspect the boards,¹ is the best evidence of past practice.

For the foregoing reasons the Election Officer finds that it was a violation of the *Rules* to deny Mr. Blake an opportunity to post campaign material on the union bulletin boards in the employee break rooms located in the mechanized warehouse at the Certified facility on Eastern Avenue in Los Angeles. It was also a violation of the *Rules* for the Local Union to remove campaign literature posted on those boards.

Certified, Local Union 848, and IBT Local 630² are hereby ordered to desist restricting IBT members employed by Certified from posting campaign literature on the Union bulletin boards in the employee break rooms in the mechanized warehouse at the Eastern Avenue, Los Angeles facility of Certified.

¹ In contrast, the Election Office staff did not inform the protestor or any IBT member of the inspection of the bulletin boards at the Certified facility.

² While not accused or found to have violated the *Rules*, Local 630, like Local 848, must permit campaign postings in accord with this decision.

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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

A handwritten signature in black ink, appearing to read "Michael H. Holland", with a long horizontal flourish extending to the right.

Michael H. Holland

cc: Frederick B. Lacey, Independent Administrator
Geraldine L. Leshin, Regional Coordinator