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Michael H Holland
Election Officer

October 29, 1991

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VIA UPS OVERNIGHT

Robert Schiavetta
615 Oak Neck Road
West Islip, NY 11795

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

Coca Cola Bottling Co.
59-02 Borden Avenue
Maspeth, NY 11378

Re: Election Office Case No. P-985-LU812-NYC

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*") by Susan Davis of the Committee to Elect Ron Carey on behalf of Robert Schiavetta, a member of Local Union 812 and a supporter of General President candidate Ron Carey. The protest alleges that on October 8, 1991, General President candidate Walter Shea, accompanied by officers of Local 812, campaigned on the premises of the Maspeth, New York facility of the Coca Cola Company both during work and non-work time of the IBT members employed by Coca Cola. The protest further alleges that Coca Cola Company denied a request to allow to allow the same access to Ron Carey.

This protest was investigated by Regional Coordinator Amy Gladstein. The investigation revealed that the following facts are undisputed. On October 8, 1991, Walter Shea in the company of five officers of Local 812, including Anthony Rumore, President of Local 812, visited the Maspeth, New York facility of Coca Cola Bottling Company, an employer of Local 812 members, for the purpose of campaigning. Mr. Shea and the Local 812 officers were allowed in the break room of the facility on that day. They made a campaign presentation during the ten-minute morning break to employees present in the break room. On the following day, Mr. Schiavetta, an employee of Coca Cola who was present at Mr. Shea's presentation, asked, through managerial employee Hugh Lehman, that General President Ron Carey be granted similar access to this Coca Cola plant for the purpose of campaigning. Two days later, on October 11, 1991, Mr. Lehman advised Mr. Schiavetta that Mr. Carey would not be granted access to the break room of Coca Cola for the purpose of campaigning since

Coca Cola did not knowingly allow Mr. Shea the access he had obtained. Thereafter, on October 15, 1991, Mr. Schiavetta filed this protest.¹

The investigation of this protest revealed two factual disputes. The first is whether the Local Union officers who accompanied Mr. Shea did so on Union time. The second is whether Mr. Shea and his supporters from the Local Union campaigned among the IBT members employed by Coca Cola during such employees' work time in addition to the admitted campaigning during the time such employees were on their break.

As to the first factual issue, the investigation revealed that the Local 812 officers who campaigned with Mr. Shea at the Maspeth Coca Cola facility on October 8, 1991 had taken a vacation day on that date. In accordance with Article VIII, § 10(b) of the *Rules*, campaigning by Union officers and employees during paid vacation time is not violative of the *Rules*. Accordingly, the Local 812 officers who were present did not violate the *Rules* since their campaign activities of October 8, 1991 occurred during a time that they were on vacation.

The second issue of disputed fact, whether campaigning took place during employees' work time, is more difficult to resolve. All parties agreed that the campaign presentation in the break room began at the commencement of the regular break time at 9:00 a.m. The break was scheduled to conclude at 9:10 a.m.; a siren sounds to alert employees of the end of the break. Coca Cola and the Union officials who were present state that the campaign presentation ended at 9:10 a.m.

There were approximately 20-25 employees present in the break room during this time on October 8, 1991. Their recollection of the time the campaign presentation ended varied. Some members indicated that the meeting ended at the sounding of the bell, while others indicated the presentation continued past that time. Apparently, some members did leave the break room at the time the bell sounded, while others may have remained for a few minutes thereafter.

No member was required to be or remain in the break room at any time. That some may have overstayed their break for a few minutes--without being disciplined by the Company--is insufficient to require any remedy other than the equal access requirement imposed below.

¹ During the investigation of this protest, Mr. Schiavetta was questioned by the plant manager regarding the filing of this protest. Coca Cola Company has acknowledged that IBT members have a right under the *Rules* to file protests without fear of retaliatory action by their employer; Coca Cola has assured the Election Officer that no adverse action will be taken against Mr. Schiavetta for filing this protest or against any other IBT members for participating in the protest process.

The issue remaining is the right of other nominated International Union candidates for General President to obtain access to the break room for campaigning purposes. It is clear that Walter Shea was provided campaigning access to the break room. Regardless of whether Coca Cola knew Mr. Shea was going to campaign on its premises prior to his arrival at the facility, it was aware that he, in fact, did so campaign; Coca Cola made no effort to eject him after it was aware he was engaged in campaign activities.

Article VIII, § 10(d) of the *Rules* requires that campaign opportunities on employer or Union premises be made available on an equal basis to all candidates and members. Accordingly, the Election Officer would normally require that Coca Cola provide equal access to its facilities for other nominated candidates for IBT General President. Local 812 objects to any remedy being imposed in this matter on the ground that the protest is untimely and should be dismissed.

The Election Officer declines to dismiss this protest on the basis of timeliness. Article XI of the *Rules* provides that pre-election protests, such as this protest, are to be filed within 48 hours of the conduct giving rise to the protest. The instant protest was filed within 72 hours of the conduct which gave rise to it. The protest is over the denial of equal access to Mr. Carey--not merely the granting of access to Mr. Shea--and was filed within three days of the denial by the company of Mr. Schiavetta's request that candidate Ron Carey be granted access to the break room for the purpose of campaigning. The purpose of the time requirements set forth in the *Rules* is to encourage prompt filings of protests and to discourage delays which will prevent the violation, if any, to be effectively remedied pre-election.

In the instant protest, the one-day lapse of time does not vitiate the purpose of the time period under the *Rules*. Given the importance of providing all members of the IBT with equal access to all candidates and the minimal delay in filing the protest, the Election Officer declines to dismiss the protest on the basis of timeliness. See also *Rules*, Article XI, § 2 (The Election Officer may investigate and impose a remedy for a violation of the *Rules* even in the absence of a protest).

Since IBT General President candidate Walter Shea was afforded access to the break room of the Maspeth, New York Coca Cola facility for campaign purposes, Coca Cola must, pursuant to Article VIII, § 10(d) of the *Rules*, afford equivalent access to other nominated candidates for General President, Ron Carey and R. V. Durham. Equivalent access means that Messrs. Carey and Durham shall be permitted entry to the break room at the Maspeth facility in order to campaign among IBT members employed there during the period such employees are on break.

The Election Officer therefore directs that both International General President candidate Ron Carey and International General President candidate R. V. Durham be granted access to the break room at the Maspeth, New York facility of Coca Cola Company during the break period afforded IBT members employed at the facility.² Each nominated General President candidate or his representative shall provide reasonable prior notice to Coca Cola of his decision to avail himself of such access. The Election Officer determines that 24-hours notice is reasonable. The Election Officer further directs that, given that Mr. Shea was accompanied by his supporters at the time of his visit to Coca Cola, both Messrs. Carey and Durham may be accompanied by a maximum of four of their supporters at the time of their visits. Accordingly, the protest is GRANTED to the extent set forth above.

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/mjv

cc: Frederick B. Lacey, Independent Administrator

Amy Gladstein, Regional Coordinator

² The Election Officer trusts and assumes that Coca Cola will impose no discipline on the IBT members it employs if such members overstay their break for a few minutes on the occasion of these campaign visits in accordance with its similar action on the occasion of Mr. Shea's visit.

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

R. V. Durham
c/o Hugh J. Beins, Esquire
Beins, Axelrod, Osborne
& Mooney
2033 K St., NW
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Washington, D.C. 20006-1002

Walter Shea
c/o Robert Baptiste, Esquire
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