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May 22, 1991

VIA UPS OVERNIGHT

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Carlos Barnett
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Ralph's Grocery Company
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Secretary-Treasurer
IBT Local Union 630
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La Puente, CA 91740

Von's Companies, Inc
618 Michialinda Ave
Arcadia, CA 90221

Re: Election Office Case No. **Post-59-LU630-CLA**
P-716-LU630-CLA
P-705-LU630-CLA
P-704-LU630-CLA

Gentlemen

This matter includes a post-election protest filed on March 30, 1991 by Raul Rodriguez, Jr and three deferred pre-election protests, all filed by Carlos Barnett and all relating to access by IBT members for campaigning purposes to premises of an employer of IBT members other than the campaigning member's own employer, Election Office Case No P-704-LU630-CLA, (Ralph's), P-705-LU630-CLA (Von's) and Election Case No P-716-LU630-CLA (Vlasic). In his post-election protest Mr Rodriguez reiterates the pre-election protests relating to access at Von's, Ralph's and Vlasic. He also alleges that one of the Election Office's Adjunct Coordinators, Ray Cordova, for reasons specified in his protest is of questionable integrity and thus contends that Mr Cordova's participation, on behalf of the Election Officer, in picking up and counting the ballots for Local 630's delegate and alternate delegate election tainted that election.

The counting of the ballots for the mail ballot election at Local 630 took place on March 29, 1991. There were 1549 ballots cast, of which 1502 were counted. Two slates - one full and one partial - were competing for the 15 delegate positions. The four alternate positions were uncontested. The Vercruse Independent Slate was headed by Secretary-Treasurer J L "Jerry" Vercruse, while the Committee of Rank and File Slate was lead by Mr Barnett and Mr Rodriguez. The results of the election were as follows

<u>VERCRUSE INDEPENDENT SLATE</u>		<u>Votes</u>
1	Betty Velasquez	1040
2	Martha Garcia	1021
3	J L Vercruse	984
4.	Jesus Gonzales	981
5	John McGee	972
6	Mike Buckley	965
7	Esther Leivas	953
8	George Blunt	947
9	Lorenzo Munoz	939
10.	Walt Pettitt	932
11	Candelario Pena	926
12	Edmund Calderon	920
13	Wilson Overall	914
14	Mauro Alejandro	908
15	Eduardo Steger	880

COMMITTEE OF RANK AND FILE

16	Carlos Barnett	497
17	Maria I Ontiveros	466
18.	Cathrine M Burke	459
19	Raul Rodriguez, Jr	458
20.	David A. Diaz, Sr	454
21	Alvin D Jenkins	444
22	George Quintero	434
23	Gerald Murray	433
24	Saul Cervantes	430
25	Douglas Magana	431
26	Dan Mulder	411
27	Hilaria Urias	397

Thus, the margin of victory for the winning delegate with the least number of votes when compared with the delegate candidate of the Committee of Rank and File slate with the greatest number of votes, Mr Barnett, was 383 votes, Mr Rodriguez trailed by 422 votes

I. Access to Ralph's Grocery Company

The protest in Election Office Case No P-704-LU630-CLA, was filed on March 25, 1991, four days prior to the ballot count date for Local 630. In the protest, Mr. Barnett alleges that Ralph's Grocery Company refused to allow him, or other IBT members not employed by it, to engage in any campaign activity on its property. Mr. Barnett states that on March 20, 1991 he spoke with Jim Beherns, a management employee of Ralph's Grocery Company, and requested access to the facility, explaining that it was unsafe to engage in campaigning outside of the facility due to incoming trucks and traffic. According to Mr. Barnett, Mr. Beherns stated that by allowing campaign activity in the facility, work would be disrupted and thus it was the company's policy to prohibit access to non-employees. Mr. Beherns also stated that he would not allow campaign literature on any bulletin boards.

The allegations contained in the protest of Mr. Barnett were investigated by Adjunct Regional Coordinator Ralph Eliaser. The investigation revealed that on or about February 15, 1991, Dan Mulder, a candidate on the slate headed by Mr. Barnett, went to Ralph's Grocery Warehouse located in Glendale. Mr. Mulder was with another member, Hilary Perrera, and attempted to gain access to company property for campaign purposes but were stopped by the security guard at the guard shack, which is located approximately 40 feet from the entrance to the property. Mr. Mulder stated that he requested permission of the guard to at least go to the break area and outside patio, or to post literature on the bulletin board. The security guard replied in the negative and refused Mr. Mulder's request to discuss the issue with management personnel.

Approximately one week later Mr. Mulder again went to Ralph's Grocery Warehouse in Glendale and attempted to campaign and distribute literature. Once again, the security guard prevented him access to the property. Further, at that time he also spoke to supervisory employees of Ralph's who also denied him access to the property. Thereafter, but prior to March 1, 1991, Mr. Mulder advised Mr. Barnett of these incidents.

On March 20, 1991, Mr. Barnett contacted James Beherns, a management employee of Ralph's Grocery Warehouse. During this conversation Mr. Barnett requested access to the facility, explaining to Mr. Beherns that to attempt to campaign in a public area at the entrance of the company was unsafe and further explaining that the employee parking lot, which is located on the roof of the warehouse facility, and the stairs used to exit and enter from that lot were both on company property. Therefore, Mr. Barnett explained that to engage in campaigning and the distribution of campaign materials one would have to enter the facility.

Both Mr. Barnett and Mr. Beherns agree that what Mr. Barnett was requesting, and what Mr. Beherns was prohibiting, was campaigning in the patio area, which is an outdoor break area located in close proximity to the entrance to the area of the employer timeclock, where IBT members "punch in" prior to the start of their work shifts.

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Members also work in and around that area ¹ Mr Beherns answered that the company's policy was to prohibit access for the purpose of campaigning to any IBT member not employed by the company

Mr. Barnett stated to Mr Beherns that the business agent from the Local would have access and would be campaigning Mr Beherns said that he could not police the activities of the business agent, but indicated that no campaign materials would be allowed on the bulletin board The conversation was then concluded with Mr Beherns indicating that the matter would be referred to the legal department, however, he would only advise Mr Barnett if the policy was subject to change.

The Adjunct Regional Coordinator who investigated this matter visited the Ralph's Glendale facility and also interviewed the shop steward employed by Ralph's at the Glendale Warehouse. The warehouse is on the west side of San Fernando Road The company property is fenced There is a sidewalk directly in front of the fenced area However, any attempts to distribute literature, or otherwise campaign among members entering the facility from San Fernando Road, although not a safety hazard to the campaigner, would most likely cause a traffic problem

The employee parking lot is located in a separately fenced area on top of the warehouse Members use a stairway which is only a few feet from the guard house to descend from the parking area and enter the warehouse The stairway is also used by members leaving work to retrieve their cars and leave the company premises The stairway is approximately 40 to 50 feet from the fence surrounding the warehouse property

In addition to the parking facility on top of the warehouse, there is also an unfenced parking lot south of the warehouse Approximately one-third of the employees of Ralph's park in this area

There is one Union bulletin board located in the Ralph's Glendale warehouse The collective bargaining agreement specifies that it is to be used exclusively for authorized Union notices, nothing may be posted without prior permission from the employer According to the Local Union, Mr Beherns and Mr Barnett, no campaign material has ever been posted on this bulletin board The Local shop steward, Lloyd Podorski, advised the Adjunct Regional Coordinator that his supervisor has allowed postings on the Union bulletin board of notices such as "for sale" notices for used automobiles, furniture, appliances, etc Only supervisory personnel of Ralph's Grocery have a key to this bulletin board

Article VIII, § 10(d) of the *Rules* provides in pertinent part as follows
No restrictions shall be placed upon candidates' or members'

¹During the 1990 Local Union Officer election, Mr Barnett who attempted to campaign in this patio area, was seen so campaigning by management employees of the company and advised to leave the area

pre-existing rights to use employer or Union bulletin boards for campaign publicity. Similarly, no restrictions shall be placed upon candidates' or members' pre-existing rights to solicit support, distribute leaflets or literature, conduct campaign rallies, hold fundraising events or engage in similar activities on employer or Union premises. Such facilities and opportunities shall be made equally available on the same basis to all candidates and members

As further explained in the Advisory Regarding Political Rights issued by the Election Officer on December 28, 1990, where a bulletin board has been utilized to post materials other than, or in addition to, official notices, and even though such other postings have never included campaign postings, IBT members have right to use the bulletin board for campaign postings. Thus, where a bulletin board has been used to post materials such as for sale signs and or other "general purpose" postings Campaign materials may be posted on that bulletin board, regardless of limitations contained in collective bargaining agreements Helton v. NLRB 656 F. 2nd 883 (D C Cir , 1981)

Thus, under the *Rules*, and based upon the facts as determined by the Election Officer investigation, the Election Officer concludes that it is a violation of the *Rules* to prohibit the posting of campaign materials on the union bulletin board located at Ralph's Grocery Warehouse in Glendale, California IBT members have a right to use such bulletin board for campaign postings, subject to regulations previously applied to "general purpose" postings such as the for sale signs previously posted on such boards.

The Election Officer investigation found no prior practice wherein Ralph's permitted IBT members not employed by it's entry to the interior of the premises of the Glendale warehouse for campaign purposes Thus, IBT members not employed by Ralph's including Messrs Mulder and Barnett and Ms Perrera, have no right under the *Rules* to enter into the warehouse itself for any campaign purpose, including posting on the union bulletin board.

However, Union members, even though they are employed by a different employer than the employer to which they seek access, also have certain rights, although more limited, to engage in campaign activities at these employers' premises. The employers' rights of private property must accommodate the right to engage in campaign activities Jean Country, 291 NLRB No 4 (1988). Where the location of an employer's facility prevents face-to-face contact with IBT members who work there, private property rights must yield to a limited right of access The Election Officer has found under these circumstances that IBT members not employed by the particular employer may nonetheless campaign in non-work areas outside of the plant, terminal or other facility in locations generally open to the public such as the parking lot or outside of entrances or entrance gates to a facility Lechmere v. NLRB, 914 F 2d 313 (1st Cir 1990). See Advisory Regarding Political Rights.

IBT members not employed by Ralph's would be able to engage in campaign

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communication with some of the members employed at Ralph's Grocery Warehouse in Glendale on the public sidewalk directly outside the entrance gates to the facility. Those members who park in the unfenced lot to the south of the warehouse enter the facility from the public sidewalk.

However, the majority of the members park within the fenced warehouse property. The Election Officer determines that to attempt to stop cars as they are entering and exiting the company property would clearly impede entry and egress to and from the employer's facility.

To allow members to distribute campaign literature at or near the guard house would allow access to all members of Local 630 employed by Ralph's Warehouse in Glendale, California without creating an impediment to entry and egress. The area is not an area where work is performed and thus campaigning in that location would not distract members who are on work time.

For the foregoing reason, the Election Officer directs that Ralph's Grocery Warehouse in Glendale permit IBT members not employed by it to distribute campaign materials and otherwise campaign directly outside the guardhouse located approximately 40 feet from the entry gate on to the property. However, the Election Officer does not find that Ralph's Grocery Warehouse in Glendale violated the *Rules* by failing to permit Mr. Barnett or his fellow slate members or supporters to campaign in the patio area as they requested. Although this area is outdoors, it is located near a work area. There is no prior practice of allowing members not employed by Ralph's to campaign in the area. Full access for campaigning purposes is obtained by allowing members to campaign at the guard house, a site less intrusive on the employer's property rights.

In summary, the protest filed in Election Office Case No P-704-LU630-CLA is GRANTED with respect to the bulletin board and to the extent noted above regarding the right of the IBT members not employed by Ralph's access to its property for campaign purposes. Whether these violations affected the outcome of the election will be discussed below.²

II. Access To Vlastic Foods

With regard to Election Office Case No P-726-LU630-CLA, Mr. Barnett alleges that on March 25, 1991, at approximately 1:30 p.m., he contacted Jay Schmid, a management employee of Vlastic Foods, requesting to be allowed access to the employee lunch area for the purpose of campaigning. Mr. Schmid advised Mr. Barnett that he should call back. Mr. Barnett alleges that he did so on March 27, 1991 and was informed by Mr. Schmid that the company policy was not to permit campaigning on

²Even if the violations did not affect the outcome of the delegate and alternate delegate election, the matter is not moot since the International Union officer election has not yet been concluded. Thus, Ralph's must comply with the decision whether or not the post-election protest is granted.

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company premises by IBT members not employed by Vlastic. Mr. Barnett alleges that he explained to Mr. Schmid that a member of the Veracruz Independent Slate was employed by Vlastic. Further the business representative of the Local had access to the company facility. Mr. Schmid advised Mr. Barnett that if he wished to send campaign literature, Vlastic would post such literature on the Union bulletin board, but would not allow Mr. Barnett access to campaign in the lunch area.

This protest was also investigated by Mr. Eliaser from the Los Angeles Region. Both Mr. Barnett and Mr. Schmid confirmed that the conversation as set forth above occurred on the dates in question, both agreed as to the substance of the conversations. Despite the company's offer, the investigation revealed that Mr. Barnett did not provide any campaign materials to be posted on the bulletin board.

The Election Officer determines that the company acted in accordance with the *Rules*. Mr. Barnett is not employed by Vlastic. There is no evidence that Vlastic has ever permitted IBT members not employed by it, and holding no official Local Union position, access to the interior of its facilities. Vlastic provided Mr. Barnett with an opportunity to have his campaign materials posted, Mr. Barnett failed to utilize such opportunity. The *Rules* were not violated.

During the course of the investigation of this protest, Mr. Schmid advised the Adjunct Regional Coordinator that he will allow, and would have allowed, IBT members not employed by Vlastic access to the employee parking for campaign purposes, if so requested. However, Mr. Barnett only requested access to the lunchroom, not the employee parking lot³.

Based on the foregoing, the Election Officer determines that the *Rules* have not been violated. The request of Mr. Barnett made to Vlastic on March 25, 1991 was for access to the employee lunch area, not the parking lot. The company agrees that IBT members, including those not employed by it, may campaign in the employee parking lot. The company's agreement is consistent with the policy of the Election Officer.

³During Local Union elections in November of 1990, Mr. Barnett attempted to campaign on the property of Vlastic but was told by a security guard that he was not allowed to do so. The security guard further advised them that they should get off company property and campaign on the sidewalk outside of the entrance to the facility. Mr. Barnett argued at that time that it was unsafe to do so and that traffic would be impeded. The guard responded by threatening to call the police which Mr. Barnett said he told him to do so. When the police arrived, they allowed Mr. Barnett to campaign a few feet inside the entrance so as to avoid impeding traffic on Orange Avenue. Mr. Barnett further alleges that he went back a few days later and requested permission to campaign in the employee parking area but was told by an employee from the personnel department, whom he just happened to encounter on his way to the office, that he would not be able to do so. The next contact that Mr. Barnett had with Vlastic was the contact described above on March 25 and 27, 1991.

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Neither the *Rules* nor the Advisory Regarding Political Rights requires an employer to allow members not its employees inside the facility for the purpose of campaigning. Further, Mr. Barnett was offered access to the bulletin board and declined that offer. For the foregoing reasons, the protest which has been numbered as Election Office Case No P-716-LU630-CLA is DENIED in its entirety.

III. Access to Von's Companies, Inc.

On March 25, 1991, four days before the counting of the ballots in the delegate election, Carlos Barnett filed a protest with the Election Officer which was assigned case number P-705-LU630-CLA. In his protest, Mr. Barnett alleges that a fellow member of the Rank & File Slate, Dan Mulder, was denied access to the Von's Grocery Company facilities at El Monte and Santa Fe Springs, California. Barnett alleges that Mulder attempted to campaign at the Von's facilities during the week of March 11, 1991. Barnett further alleges that on March 20, 1991 he contacted Bruce Thompson of Von's labor relations office and was informed that no Union members not employed by Von's could campaign on company property.

The Election Officer's investigation of this protest was conducted by Adjunct Regional Coordinator Gerry Fellman. That investigation revealed that Mr. Mulder is a member of Local Union 630 and is employed by Certified Grocery. During a two week period in March 1991, Mulder attempted to campaign at Von's transportation facilities at El Monte and Santa Fe Springs, California. On two occasions during that period Mulder visited the El Monte facility and requested permission to enter the Von's facility to post campaign literature on general purpose bulletin boards and to leave literature in breakrooms. Those requests were denied and Mulder left the facility. Mr. Mulder also went to the Von's Santa Fe Springs facility and requested access to the interior of the facility to post campaign literature and to leave campaign literature in breakrooms. His first request, made to a security guard, was denied. On his second visit to the Santa Fe Springs facility he spoke to Bruce Thompson, a labor relations official for Von's. Thompson stated that he would have to pass on Mulder's request for access to the bulletin boards and breakrooms to another Von's official. Mulder left the area when it became clear that he was not going to be permitted inside the facility.

While Von's does maintain a solicitation policy which denies access to the interior of its facilities to IBT members who are not its employees, Von's does permit access by such members to its employee parking lots for campaign purposes. The Election Officer has recently held that the Von's solicitation policy, on its face, is consistent with the *Election Rules*, see Election Office Case No P-638-LU63-CLA. There is no evidence that either Mr. Mulder or Mr. Barnett was denied access to Von's employee parking lots for campaign purposes.

Similarly, there is no allegation and no evidence that any IBT member not employed by Von's was permitted access to the interior of Von's facilities for campaigning during the delegate election. Mr. Barnett does allege that Von's permits access to the interior of its facilities by Union officials for Union business and

campaigning Access to the interior of Von's facilities by Union officials on Union business is not violative of the *Election Rules* Von's and other employers of IBT members are required, as a matter of substantive labor law, to permit union officials to have access to their facilities for official Union business Thus, permitting such access does not establish a practice or pre-existing right enabling other members, not employees, to have access under the *Rules* to the interior of the facility.⁴

It is not violative of the *Rules* for a Union official to engage in incidental campaigning while on Union business, even when that Union business takes that person inside of an employer's facility. It is important to emphasize that such official may not abuse that status to secure access to the interior of such facility to engage in campaigning which is not incidental to their official Union business. Mr. Barnett has not alleged, and the Election Officer does not find, that any Union official has engaged in other than incidental campaigning during the delegate election in the interior of a Von's facility while at such facility on Union business

For the foregoing reasons, the protest with respect to Von's is DENIED.

IV. Effect on the Result of the Election of the Access Violation

Article XI, § 1 (b)(2) of the *Rules* provides that: "Post-election protests shall only be considered and remedied if the alleged violation may have affected the outcome of the election " For a violation to have affected the results of the election, there must be a meaningful relationship between the violation and the results of the election See Wirtz v. Local Unions 410, 410(A), 410(B) & 410(C), International Union of Operating Engineers, 366 F 2d 438 (2nd Cir 1966); Dole v. Mailhandlers, Local 317, 132 LRRM 2299 (D C M D Alabama 1989) The only violation of the *Rules*, found by the Election Officer to have occurred, was the denial of access by Ralph's There are 172 members of Local 630 employed by Ralph's Since the vote margin between the lowest ranked winning candidate and the highest ranked losing candidate was 383, the votes of the members employed by Ralph's could not have affected the outcome of this election Further, the campaign in Local 630 was vigorously contested with aggressive campaigning by members of both slates While the number of members employed at Von's and Ralph's is not insubstantial, the evidence does not support a conclusion that the Committee of Rank & File was prevented from conducting its campaign among all Local 630 members Moreover, the denial of access from which protests were filed occurred but a few days prior to the time the ballots were counted By the date access was requested, it is likely that most members had already voted It is not probable that the inability to gain access on the dates on which it was requested materially affected the results of this election sufficient to overcome the nearly 400 vote margin

⁴Although Mr Barnett obtained access for campaigning inside Von's Santa Fe and El Monte facilities during the Local Union officer election campaign, he did so either by subterfuge - claiming an official Union business reason for obtaining access - or by avoiding all supervisory employees No past practice can be established by this type of activity

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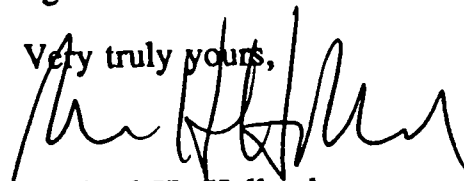
local union president, who in turn placed them in the office of the local's secretary-treasurer. When a question was raised concerning whether Mr Cordova may have compromised the integrity of the ballot, an investigation was undertaken by the full CWA election committee. No merit was found in these charges. Specifically, all of the ballots in question were numbered by stubs. All the ballots were accounted for, none of the ballots were found to be missing.

No factual basis exists with respect to the allegations of Mr Rodriguez concerning Mr Cordova. The Election Officer finds no impropriety could or does exist concerning Mr. Cordova's role in the election, including his participation in the picking up and counting of ballots. Thus, this aspect of the post-election protest by Mr Rodriguez is **DENIED**

In accordance with the foregoing, the deferred pre-election protests of Mr Barnett as well as the post-election protest of Mr Rodriguez are in their entirety **DENIED**

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
Geraldine L Leshin, Regional Coordinator