

August 8, 1996

VIA UPS OVERNIGHT

Ken Mee
42356 Greenbrier Park Drive
Fremont, CA 94538

James P. Hoffa
2593 Hounds Chase
Troy, MI 48098

Coca-Cola Industries
Corporate Counsel
2500 Windy Ridge Parkway
Atlanta, GA 30339

Steve Hennesey, Terminal Manager
Sealand Services
669 Harbor Plaza
Long Beach, CA 90802

Cindy Megna, Personnel Director
Coca-Cola Plant
13255 E. Amar Road
City of Industry, CA 91746

Ed Burke
Teamsters Local Union 692
3888 Cherry Avenue
Long Beach, CA 90807

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

Kenneth P. Young
Wohlner, Kaplon, Phillips,
Young & Barsh
15760 Ventura Boulevard, Suite 1510
Encino, CA 91436

Re: Election Office Case No. P-818-LU692-CSF

Gentlepersons:

A pre-election protest was filed, pursuant to Article XIV, Section 2(b) of the *Rules for the 1995-1996 IBT International Union Delegate and Officer Election ("Rules")*, by Ken Mee, a member of Local Union 287 and a candidate for re-election to the position of International vice president. Mr. Mee alleges that he was prevented from campaigning at Sealand

Services (“Sealand”) in Long Beach, California by Terminal Manager Steve Hennesey and Local Union 692 Business Representative Ed Burke. Mr. Mee also alleges that Mr. Burke campaigned at Sealand while on union time, in violation of the *Rules*. Lastly, Mr. Mee alleges that campaign literature supporting the candidacy of James P. Hoffa was posted on a glass-enclosed union bulletin board at the Coca-Cola plant in City of Industry, California. He contends that supporters of Ron Carey were offered no opportunity to post pro-Carey material on the board, as required by the *Rules*.

Adjunct Regional Coordinator Victoria Chin investigated the protest.

1. Allegation of Denial of Access at Sealand

Sealand responds that Mr. Mee was attempting to campaign in an employee break room in violation of company policy. Sealand allows campaigning in its employee parking lots in compliance with the *Rules*, but does not permit non-employees to campaign in the facility.

The investigation revealed that on June 19, 1996, Mr. Mee and Jim Newman, a member of Local Union 952, arrived at the Sealand facility to campaign. Mr. Mee was admitted to the facility by a security guard and went to an employee break room to distribute materials. While there, he was approached by Mr. Hennesey who explained Sealand’s “no on-site campaigning” policy and asked him to leave.

Article VIII, Section 11 of the *Rules* creates a limited right of access for candidates for International office to campaign in work-site parking lots where union members park their vehicles. This right does not extend to any other part of the employer’s facility or property. While, under the *Rules*, an employer cannot interfere with an employee’s pre-existing right to post and distribute material inside the facility, an employer may restrict non-employee access to areas of its property, other than the employee parking lot, if it has not previously permitted non-employees such access.

Mr. Mee’s contention that Sealand violated the *Rules* by not allowing him to campaign inside its facility is, therefore, without merit.

2. Allegation that Mr. Burke Was Campaigning on Union Time

Under Article VIII, Section 11(b) of the *Rules*, union officers “retain the right to participate in campaign activities, including the right . . . to openly support or oppose any candidate [and] to aid or campaign for any candidate.” While the provision prohibits officers from campaigning on union time, it allows “campaigning incidental to regular Union business,” as well as “campaigning during paid vacation, paid lunch hours or breaks, or similar paid time off.”

The investigation revealed that Mr. Burke arrived at the facility to participate in a pre-step grievance meeting. During a break in the grievance meeting, Mr. Burke went to the break room

where he saw Mr. Mee attempting to campaign. Mr. Burke went immediately to Mr. Hennesey and reported Mr. Mee's presence inside the facility. Mr. Burke then approached Mr. Mee who was answering questions concerning campaign issues posed by employees. Mr. Burke began to criticize Mr. Mee's answers, accusing him of dishonesty. Mr. Burke used profanity and spoke in a heated manner when he continued to criticize

Mr. Mee, Mr. Carey and the current IBT administration. He challenged Mr. Mee to debate issues that Mr. Mee had addressed. While the protester contends that Mr. Burke identified himself as a Hoffa supporter, none of the witnesses interviewed state that Mr. Burke mentioned Mr. Hoffa or any candidate on the Hoffa slate. The Election Officer credits Mr. Burke's statement on this point.

Since Mr. Burke did not mention a non-incumbent candidate, the conversation could be viewed as a debate about the policies of the current IBT administration, an activity the Election Officer has determined does not constitute campaigning. Just as it is proper for incumbent union officers to expend union resources for the conduct of legitimate union business, it is permissible for a union member to criticize the manner in which the incumbent conducts such business. See Martin, et al., P-010-IBT-PNJ, et seq. (August 17, 1995) aff'd, 95 - Elec. App. - 18 (KC) (October 2, 1995). Furthermore, the investigation indicates that Mr. Burke was on a break from union business at the time of his exchange with Mr. Mee. Therefore, even if certain comments of Mr. Burke's could be construed as campaigning, he did not violate the *Rules*.

3. Allegation of Campaign Interference by Mr. Burke

The *Rules* at Article VIII, Section 11(f) prohibit retaliation and the threat of retaliation by any person against a member for exercising any right guaranteed by the *Rules*. This prohibition includes violence, threats of violence and harassment. It does not include the natural discourse that arises as a result of campaign-related activities. The fact that Mr. Burke engaged Mr. Mee in a discussion, even a heated one, does not constitute a violation of the *Rules*, which are designed to ensure fair, honest, open and informed elections. See Dunn, P-110-LU25-BOS (July 28, 1995), aff'd, 95 - Elec. App. - 8 (KC) (August 21, 1995); Scott, P-1092-LU745-SOU (November 21, 1991).

4. Denial of Access to Bulletin Board at Coca-Cola

On June 20, 1996, Messrs. Mee and Newman entered the Coca-Cola facility where they noticed three pages of pro-Hoffa material posted on a glass-enclosed union bulletin board. Mr. Mee asked Cindy Megna, the employer's personnel director, to allow him to post pro-Carey material on the same board. Ms. Megna refused, but stated that she would remove the pro-Hoffa literature later.

The pro-Hoffa material was posted by a Local Union 848 steward on June 15, 1996. The steward obtained the key for the bulletin board from Ms. Megna because the local union does not have

its own key. Ms. Megna did not review the material prior to giving the steward the key. The material was removed on June 24, 1996.

At Article VIII, Section 11(d), the *Rules* provides:

No restrictions shall be placed upon candidates' or members' preexisting 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 available on a nondiscriminatory basis.

The Election Officer has previously stated that “[i]f an employer chooses to allow campaigning on their premises, it may do so as long as equal access is provided to all candidates pursuant to Article VIII, Section 11(d).” Burrows, P-118-LU70-CLA (September 13, 1995), aff’d, 95 - Elec. App. - 16 (KC) (September 30, 1995); Lopez, P-667-LU743-CHI (April 8, 1996) (“The non-discrimination provision requires equal treatment only of those members who have a preexisting right to be there.”).

Coca-Cola has a policy whereby non-employees are not allowed to campaign on its premises except in the employee parking lots. Mr. Mee, therefore, has no right to personally campaign or post literature in the facility. The employer also has a policy prohibiting the posting of campaign material on union bulletin boards at its work sites. The facts of this case indicate that this policy was not strictly enforced. As a result, the Hoffa campaign received disparate access to the employer’s facility, in violation of the *Rules*. Although the Election Officer finds that the Carey campaign is entitled to access based upon the recent posting of pro-Hoffa literature, she does not find that a pre-existing right to post campaign material has been created. See Pape, P-366-LU390-SEC, et seq. (February 15, 1996); Mee, P-819-LU630-CLA, et seq. (July 31, 1996).

Accordingly, the protest, as it alleges the granting of disparate access to the work-site bulletin board at Coca-Cola, is GRANTED as to the limited facts of this posting. The protest is DENIED in all other respects.

When the Election Officer determines that the *Rules* have been violated, she “may take whatever remedial action is appropriate.” Article XIV, Section 4. In fashioning the appropriate remedy, the Election Officer views the nature and seriousness of the violation, as well as its potential for interfering with the election process.

The Election Officer orders that the employer post literature submitted by the Carey campaign inside the enclosing glass of the bulletin board referenced in this protest. The literature, which will not exceed three eight-and-one-half by eleven inch pages, may be submitted to Local Union 848 by

Ken Mee
August 8, 1996
Page 5

the Carey campaign within ten (10) working days of the receipt of this decision. Local Union 848, by direction of its principal officer, will obtain the key for the bulletin board on which the protested material was posted from the employer at the City of Industry facility and post the Carey campaign literature on the bulletin board within one (1) day of receipt of the literature. The literature will remain posted for ten (10) working days. Coca-Cola shall cooperate and shall not interfere with this Order. Within two (2) working days of the posting of this literature, the principal officer of Local Union 848 will submit to the Election Officer an affidavit detailing its compliance with this decision, including the date of the posting of the campaign literature.

An order of the Election Officer, unless otherwise stayed, takes immediate effect against a party found to be in violation of the *Rules*. In Re: Lopez, 96 - Elec. App. - 73 (KC) (February 13, 1966).

Any interested party not satisfied with this determination may request a hearing before the Election Appeals Master within one day of 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:

Kenneth Conboy, Esq.
Latham & Watkins
885 Third Avenue, Suite 1000
New York, NY 10022
Fax (212) 751-4864

Copies of the request for hearing must be served on the parties listed above as well as upon the Election Officer, 400 N. Capitol Street, Suite 855, Washington, D.C. 20001, Facsimile (202) 624-3525. A copy of the protest must accompany the request for a hearing.

Sincerely,

Barbara Zack Quindel
Election Officer

cc: Kenneth Conboy, Election Appeals Master
Victoria Chin, Adjunct Regional Coordinator