



OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
25 Louisiana Avenue, NW
Washington, DC 20001

Michael H Holland
Election Officer

(202) 624-8778
1-800-828-6496
Fax (202) 624-8792

June 22, 1991

VIA UPS OVERNIGHT MAIL

Mr. Gerald Moerler
13104 Glen Court #40
Chino Hills, California 91709

Robert Marciel, Secretary-Treasurer
IBT Local 63
1616 West Ninth Street, Room 205
Los Angeles, California 90015

Re: Case No. Conv-2-LU63-CLA

Gentlemen:

A protest was filed pursuant to the Rules for the IBT International Union Delegate and Officer Election, revised August 1, 1990 ("Rules"), by Gerald Moerler. A copy of such protest is enclosed. This is another in a series of protests relating to the election of delegates and alternate delegates to the IBT International Union Convention from IBT Local 63 in which Mr. Moerler was a candidate on the Delegates for Carey Slate. This protest challenges the possible seating of Local 63's Secretary-Treasurer, Robert Marciel, as a delegate of an IBT Joint Council or State or Area Conference at the forthcoming IBT International Convention; the protest also requests that Mr. Marciel be disqualified from being nominated as a candidate for any International Union position.

Mr. Moerler's protest emanates from the June 17, 1991, decision in Election Office Case No. Post 73-LU63-CLA, aff'd 91 Elec.App.-167 in which the Election Officer disqualified the members of the Informed Teamsters For The Good Of All Slate ("Informed Teamsters Slate") from serving as Local 63's delegates. Although Mr. Marciel was not a candidate on the Informed Teamsters Slate, the Election Officer found that Mr. Marciel and the other officers and business agents of Local 63, who committed numerous violations of the Election Rules, created, financed, controlled, and were "inextricably intertwined" (Decision, p.19) with the Informed Teamsters Slate. As

June 22, 1991

Mr. Gerald Moerler
Robert Marciel, Secretary-Treasurer
IBT Loc1 63

a result of this decision, Mr. Moerler asserts that Mr. Marciel should not be seated as an IBT Joint Council or Area Council delegate and should not be permitted to run for International office.

Article III, Section 5(e) of the IBT International Constitution states:

Joint Councils and State and Area Conferences are entitled to one (1) delegate each, to be selected by the Executive Board of the Joint Council or Policy Committee of the Conference....

However, Joint Council, State or Area Conference delegates will not be permitted to vote on candidate nominations at the June 1991 IBT Convention because none of them has been certified by the Election Officer as required by the Consent Order. 1/ The Convention Call issued by the IBT Secretary-Treasurer confirms this non-voting status as follows:

In accordance with Article III, Section 5(e), Joint Councils, and State and Area Conferences are entitled to one (1) delegate each. However, such delegates will not be permitted to nominate from the floor or to vote for the nomination of International Union Officers or nominate or vote for the election for International Trustee.

The right of delegates from Joint Councils and State and Area Conferences to attend the 1991 IBT International Convention, as well as the limitations upon their participation at the Convention, has been approved by the Independent Administrator (Case No. 91-Misc.Elec.Dec.-2, April 25, 1991). The United States District Court dismissed the appeal from that decision, 88 Civ. 4486 (S.D.N.Y., June 19, 1991).

Thus, Mr. Marciel's status as a representative of a Joint Council or Area Conference, assuming he has been so

1/ The Consent Order requires the Election Officer to certify all delegates who have been "chosen by direct rank-and-file secret balloting..." (paragraph D(ii), p. 13).

June 22, 1991

Mr. Gerald Moerler
Robert Marciel, Secretary-Treasurer
IBT Loc 1 63

selected, will be limited; he will not be permitted to vote on any nomination or election of International Union officers. The role of delegates of Joint or Area Conferences has been narrowly circumscribed as having nothing to do with the nomination or election of IBT officers. Since the Election Officer's jurisdiction does not include internal IBT matters which do not affect the nomination and election process, the Election Officer is without jurisdiction to disqualify Mr. Marciel from a Joint Council or Area or State Conference non-voting delegate position. For these reasons, this aspect of Mr. Moerler's protest is denied.

Mr. Moerler also asks that "Marciel be disqualified should he be nominated for any International Officer position". At the time the Election Officer rendered his decision in Election Office Case No. Post 73-LU63-CLA, the Election Officer was aware that Mr. Marciel might be a candidate and seek nomination for an International Officer position. The decision rendered by the Election Officer in Election Office Case No. Post 73-LU63-CLA imposed the most drastic remedy that the Election Officer has imposed to date with respect to any election protest. However, in that case, the Election Officer did not disqualify Mr. Marciel from seeking nomination for an International officer position.

Further, in his affirmance of the Election Officer's decision, the Independent Administrator has referred the underlying protest, the Election Officer's decision, and his decision to the court-appointed Investigations Officer for consideration and determination with respect to bringing charges against Mr. Marciel or others under the Consent Order. 91 Elec.App. 167. Under the Consent Order, the Investigations Officer has the exclusive authority to initiate disciplinary charges against any member of the IBT and the Independent Administrator has exclusive authority to hear and determine such charges, including the imposition of appropriate penalty.

The matter has now been referred by the Independent Administrator to the Investigations Officer. It would constitute a usurpation of jurisdiction for the Election Officer to make a determination on a matter presently

June 22, 1991

Mr. Gerald Moerler
Robert Marciel, Secretary-Treasurer
IBT Local 63

pending before the Investigations Officer and subject subsequent review by the Independent Administrator. The Election Officer will, of course, abide by any decision made by the Independent Administrator with respect to the eligibility of any IBT member to run for any International Officer position. See Supplementary Election Officer Rules for the 1991 IBT Convention Floor Nominations, Nomination Voting and Trustee Elections, Article IV, Section C. For these reasons, the Election Officer denies this aspect of Mr. Moerler's protest also.

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 filed with the Office of the Independent Administrator, IBT, c/o Walt Disney World Dolphin Hotel, Suite 1033, 1500 EPCOT Resort Boulevard, Lake Buena Vista, Florida 32810, Facsimile (407) 560-1370. Copies of the request for hearing must be served on the parties listed above, as well as upon the Election Officer, IBT, c/o Walt Disney World Dolphin Hotel, Australia 3, 1500 EPCOT Resort Boulevard, Lake Buena Vista, Florida 32820, Facsimile (407) 560-1365. A copy of the protest must accompany the request for a hearing.

Very truly yours,



Michael H. Holland
Election Officer

Enclosure

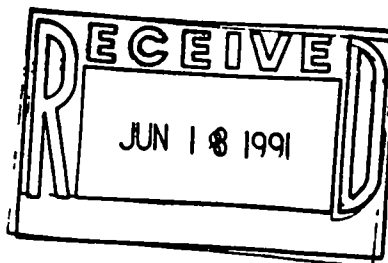
MHH/ib

cc: Frederick B. Lacey, Independent Administrator, IBT
Geraldine Leshin, Regional Coordinator
Susan Jennick, Esq. (By Facsimile)
Gerald Moerler (By Hand - Royal Plaza Hotel)
Robert Marciel, Secretary-Treasurer, IBT Local 63
(By Hand)

June 18, 1991

63/CLA

XMHH
BJH
TO: MARTY



Michael Holland
Elections Officer
25 Louisiana Avenue NW
Washington, DC 20001

Dear Michael Holland:

I am filing this protest because of information I received about Robert Marciel in the decision issued by the Election Officer on June 17, 1991 for the post-election protests in the Local 63 delegate elections.

Because of this information, including collecting and voting other members ballots, making false statements to the Election Officer, impeding the Election Officer's investigation of protests, and consistently defying orders of the Election Officer and the Independent Administrator, I challenge Marciel's seating as a delegate to the 1991 IBT Convention in any capacity. I believe that he has been appointed to be a delegate to the convention. I also ask that Marciel be disqualified should he be nominated for any International Officer position.

I also ask that the information obtained by the Election Officer in connection with the investigation be forwarded to the Investigations Officer for consideration of further disciplinary action against all those who were found to have collected and voted other members ballots.

Sincerely,

Handwritten signature of Gerald Moerler.

Gerald Moerler

cc: Geraldine Leshin, Regional Coordinator
Robert Marciel, Secretary-Treasurer, IBT Local Union 63
Susan Jennik, Counsel for Protester