



OFFICE OF THE ELECTION OFFICER
INTERNATIONAL BROTHERHOOD OF TEAMSTERS
25 Louisiana Avenue, NW
Washington, DC 20001
(202) 624-8778
1-800-828-6496
Fax (202) 624-8792

Michael H. Holland
Election Officer

Chicago Office:
% Cornfield and Feldman
343 South Dearborn Street
Chicago, IL 60604
(312) 922-2800

November 18, 1991

VIA UPS OVERNIGHT

Gerald Moerler
13104 Glen Court #40
Chino Hills, CA 91709

Everett J. Roberts
Trustee
IBT Local Union 63
1616 W. Ninth Street
Room 205
Los Angeles, CA 90015

Re: Election Office Case No. P-1032-LU63-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*") by Gerald Moerler, a member of Local 63. Mr. Moerler claims that Everett Roberts, Trustee of Local 63, has discriminated against him in violation of the *Rules*.

Mr. Moerler contends that Mr. Roberts, Trustee of Local 63 and a supporter of the R. V. Durham Unity Team has discriminated against him because he supports General President candidate Ron Carey and the Ron Carey Slate, by requiring him to reimburse Local 63 for \$8.73 in disallowed Convention expenses without specifying the reason for the expense disallowance. Mr. Moerler also claims discrimination since the Local did not receive the check he sent and is asking that the first check be replaced. Mr. Moerler also complains that his wages for the week of the 1991 Convention were paid for seven weeks or until he complied with the request to reimburse the Local for the disallowed expenses and that other Convention delegates were inconvenienced in obtaining their lost wages. Mr. Moerler's final claims of discrimination concern a meeting scheduled between himself and Mr. Roberts which Mr. Roberts did not attend and Mr. Roberts alleged refusal to provide him with unspecified information he is entitled to receive under the IBT Constitution and Local 63's By-Laws.

With respect to the issue of 1991 IBT International Union Convention expenses, the investigation reveals that Local 63 disallowed \$8.73 of the Convention expenses for which Mr. Moerler sought reimbursement. Mr. Moerler had expended such sum for newspaper and convenience store purchases--personal expenses not subject to reimbursement under the *Rules*. See Election Office Case No. P-188-LU769-SEC,

affirmed 91 Elec. App. 193. Mr. Moerler was notified of the disallowance by telephone call from Mr. Roberts sometime prior to August 7, 1991. During such conversation Mr. Moerler indicated his willingness to reimburse the Local in the amount of \$8.73. By letter dated August 7, 1991, Mr. Roberts confirmed that telephone conversation and transmitted to Mr. Moerler a check for his wages for the week of the Convention. Mr. Moerler claims that he mailed a check in the amount of \$8.73 to Local 63. Local 63 claims that it has never received such check and has asked Mr. Moerler to reissue the check, suggesting that he stop payment on the earlier check. Mr. Moerler now protests the prior expense disallowance, claiming discrimination because Mary Elizade, who was not a credentialed delegate to the 1991 IBT International Union Convention but attended the Convention on behalf of the IBT Dairy Conference, was provided by Local 63 per diem expense reimbursement in the amount of \$1,300, an amount that exceeds the per diem allowance specified in the Advisory Regarding Convention Expenses, issued April 19, 1991 ("Advisory").

In the first instance, if Mr. Moerler wished to contest the \$8.73 expense disallowance by Local 63, he had the opportunity to do so in August of 1991. To wait to do so until November 1, 1991 makes the protest on that issue untimely. To the extent that Mr. Moerler relies upon recent information he received concerning Mary Elizade, the circumstances surrounding Ms. Elizade's attendance at the 1991 IBT International Union Convention demonstrates that Mr. Moerler has not been subjected to disparate treatment or that the *Rules* have been otherwise violated.

Ms. Elizade, an employee of Local 63, was directed to attend the 1991 Convention by the then principle officer of Local 63 Robert Marciel.¹ Ms. Elizade was required to be at the Convention site for a ten-day period to help set up and operate the Convention display of the IBT Dairy Conference. Thus, while Ms. Elizade may have received \$1,300 for per diem Convention expenses, she received but \$130 per day, the daily per diem specified by the Election Officer in his Advisory. Mr. Moerler and his fellow delegates and alternate delegates to the 1991 IBT International Union Convention also received per diem expense allowances in the amount of \$130 per day.

Further, long prior to the date of Mr. Moerler's protest, Mr. Roberts and IBT auditor Bruce Mohn wrote to the Election Officer seeking advice regarding reimbursement by Local 63 to Ms. Elizade of her daily per diem expenses. The Election Officer determined it would be unfair to penalize Ms. Elizade because she obeyed a

¹ After the Convention, upon direction of the Independent Administrator, Local Union 63 was placed in trusteeship, Mr. Marciel removed from his position as Secretary-Treasurer, and Mr. Roberts appointed to serve as the Local Union 63 Trustee. Mr. Marciel has supported the Shea-Ligurotis Action Team while Mr. Moerler contends that Mr. Roberts favors the R. V. Durham Unity Team.

direct order of her supervisor, i.e. Mr. Marciel, regardless of whether Mr. Marciel's order was appropriate or had been appropriately approved by Local 63. Local 63 is also in the process of seeking reimbursement for Ms. Elizade's Convention expenses from the IBT Dairy Conference; if successful, no expenses with respect to Mr. Elizade will be borne by the Local. The evidence fails to support Mr. Moerler's claim of discrimination.²

A meeting was scheduled for October 23, 1991 between Mr. Roberts and Mr. Moerler for the purpose of attempting to discuss the issues which separated them and to create a better understanding between them. Mr. Roberts acknowledges that due to unforeseen circumstances he returned to the Local 63 office late, after the time of his scheduled meeting with Mr. Moerler. Mr. Roberts apologized to Mr. Moerler and scheduled another meeting with him for October 25, 1991. Mr. Moerler did not appear for the October 25, 1991 meeting.

The Election Officer's investigation has uncovered no evidence of disparate or discriminatory treatment of Mr. Moerler by Mr. Roberts because of Mr. Moerler's political positions or for any other reason. Mr. Moerler has requested and received financial and other information about Local 63 from Mr. Roberts. There is no reason to believe that other information which he requested--and to which he may be entitled under the IBT International Union Constitution or Local 63's By-laws--will not be appropriately provided in due course.³

This protest is DENIED in its entirety.

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,

² The evidence presented further does not support Mr. Moerler's claims that purposeful inconvenience was created for him or the other delegates or alternate delegates to the Convention by either the timing or the method for such delegates or alternate delegates to receive their wages for the week of the Convention.

³ The Election Officer notes that Mr. Roberts has other obligations as Trustee of Local 63 beyond responding to Mr. Moerler's requests for information.

Gerald Moerler
November 18, 1991
Page 4

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

Susan Jennik, Esq.
Association for Union Democracy
500 State St.
Brooklyn, NY 11217

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 Street, NW
Suite 300
Washington, D.C. 20006-1002

Walter Shea
c/o Robert Baptiste, Esquire
Baptiste & Wilder
1919 Pennsylvania Avenue, N.W.
Suite 505
Washington, D.C. 20006