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783/SCE

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January 14, 1991

VIA UPS OVERNIGHT

Kevin Lally
1003 Oakridge Dr.
Lanesville, IN 47136

William D. Norris
President
IBT Local 783
7711 Beulah Church Rd.
Louisville, KY 40228

Re: Election Office Case No. P-125-LU783-SCE

Gentlemen:

A pre-election protest was timely filed pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*"). In his protest Kevin Lally contends that the *Rules* have been violated in that the Local Union has announced that contrary to past practice the Local will not pay lost time wages for delegates who attend the 1991 IBT International Convention. Mr. Lally also contends that the reimbursement amounts proposed by the Local are so restrictive that they tend to deter IBT members from running for delegate.

The investigation shows the following At the time of the 1986 IBT International Convention, Local Union 783 paid the salaries of all officers attending the convention, as has been their practice, as well as other expenses associated with Convention attendance The Local Union officers were not required to use vacation time or any other form of personal time to attend the Convention Additionally, the officers travelled by air to the 1986 meeting which was held in Las Vegas.

At the nominations meeting held on December 12, 1990, Local Union President William Norris stated that the Local Union would pay hotel and meal expenses, but would not pay lost time wages for delegates. Additionally, Mr. Norris stated that delegates would be expected to drive rather than fly to the Convention and the Local Union would reimburse for mileage.

The Local Union has informed the Election Officer that its practice of paying salary to officers and business agents, while they attend the Convention was reasonable because these members often work nights and weekends without the benefit of premiums

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such as shift differential or overtime, unlike members who work for an hourly rate of pay. Presumably the Local believes that those members who work for an hourly rate rather than a salary can work extra shifts and weekends in order to replace lost wages that may result from attendance at the IBT International Convention.

The Election Officer does not find compelling the Local Union's rationale for changing its past practice with respect to reimbursing expenses for delegates. The IBT Constitution provides that Local Unions shall pay the expenses of all delegates to the International Convention, Article III, § IV. This uniform past practice effectively determined expenses to include payments to replace lost wages. The Election Officer recognizes that financial reimbursement practices may differ among Local Unions given that the Locals have varying membership size and dues income. However, this Local Union has consistently decided prior to this election to reimburse its delegates for lost wages.

Local Union 783's consistent interpretation of "expenses" to include payment of wages to officers for time spent at the Convention is not an unreasonable interpretation of the Constitution since members in attendance at an International Convention are required to attend meetings and otherwise conduct Union business. They may be away from home or away from their daily work routines, but they are not on vacation, with the freedom that vacation time brings for personal scheduling, travel, or recreational activities. Thus Local Union 783 has found Convention expenses in all past years to include delegate salaries, while they are in attendance at the Convention. In effect, the Local Union work at Convention is salaried work.

The Local Union has not advanced a justifiable rationale for changing this past practice. IBT members who are delegates, but not officers or employees of the Union, may -- depending on the result of the delegate election -- likewise be in attendance at the Convention to conduct Union business as representatives of the membership. The position of delegate is one that carries responsibility, whether that position is occupied by Local Union officers or by the Teamster members who works for an employer other than the Local Union. Just like the officers, these members will not be on vacation while at the Convention with the freedom that personal time brings. There is, therefore, no reason to require these members to use vacation time to conduct Union business by discontinuing the practice of paying wages to delegates who represent the Union for the purpose of conducting Union business at the Convention. It remains reasonable to consider Local Union work at the Convention salaried work.

The Local has not made an argument to the Election Officer in this case of financial hardship. The Election Officer, notes, additionally, that the General Executive Board has this year passed a Resolution authorizing reimbursement to the Local Unions for delegate expense in the amount of \$50 00/day per delegate for up to six days. (GEB Resolution, April 26, 1990).

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For all these reasons the Election Officer orders Local Union 783 to continue its past practice of paying wages to all members who attend the 1990 IBT Convention in the position of delegate.

The Local has indicated that it intends to pay reasonable expenses associated with hotel costs and meals. The Election Officer will review protests should the Local fail to reimburse appropriately at the time vouchers or expense forms are submitted. The Election Officer notes that in many cases air fare may actually be a less expensive, and thus reasonable means of transportation as travel by car. The Election Officer will consider failure to pay reasonable travel expenses based solely on the mode of transportation utilized a violation of the *Rules*.

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/mca

cc Frederick B Lacey, Independent Administrator
Peggy A Hillman, Regional Coordinator

IN RE:

KEVIN LALLY,

Complainant,

and

IBT LOCAL UNION 783,

Respondent.

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DECISION OF THE
INDEPENDENT ADMINISTRATOR

This is another appeal from a decision by the Election Officer (Case No. P-¹²⁵LU783-SCE) involving IBT Local Union 783 ("the Local") and its officers on the one hand, and Kevin Lally on the other.

A hearing was held before me by way of telephone conference. Heard were: the Local's officers, Jerry Vincent (Secretary-Treasurer) and William Norris (President); John Sullivan and Peggy Hillman for the Election Officer; and Kevin Lally and a witness on his behalf, Terry Nevitt.

The Local's announced position is that it would not pay lost time wages for delegates attending the 1991 IBT International Convention. The Election Officer initially found that such a position was contrary to past practice of the Local. Article III, § 4 of the IBT Constitution provides that Local Unions shall pay the expenses of all delegates to the International Convention. The Election Officer found that the Local's "uniform past practice effectively determined expenses to include payments to replace lost

wages." See January 14, 1991, Decision of the Election Officer, Case No. P-124-LU783-SCE, at P. 2

The investigation of Mr. Lally's protest was conducted by the Regional Coordinator, Peggy Hillman. Ms. Hillman set forth the nature and scope of her investigation in a submitted written "Statement." Copy attached hereto as Exhibit A. During Ms. Hillman's investigation, the Local's officers informed her that it was past practice of the Local to pay the time wage (salary) of officers and business agents when they attended, as delegates, previous IBT Conventions. No mention of vacation pay was made at that time. Ms. Hillman, at the hearing before me, indicated that the Local's officers explained that their past practice was reasonable because officers are salaried workers and cannot replace lost wages. The Local posits that a deviation from past practice would be acceptable because hourly workers could work overtime hours and receive premium pay for doing so thereby replacing lost wages; whereas, salaried officers could not replace lost wages by working overtime.

Before addressing the evidence adduced at the hearing, if the position expressed by the Local to Ms. Hillman concerning salaried versus hourly employees represented its consistent and singular position with respect to their denial of time wages for those delegates, I would conclude that the admitted past practice of the Local (i.e. to pay the time wages for salaried employees who attended conventions) would likewise require the Local to pay the

time wage of Mr. Lally and others similarly situated (hourly employees) in the Local during their attendance at, as delegates or alternate delegates, the 1991 IBT International Convention. However, the Local has been inconsistent in its explanations of the Local's past practices.

At the hearing before me, Messrs. Vincent and Norris asserted for the first time, contrary to the information supplied to Ms. Hillman during her investigation (and set forth in her "Statement"), that in 1986 they acted as officer-delegates (along with others) from the Local, using their vacation time, thus drawing full salary while at the convention and also effectively reducing their total available vacation time for that year. Messrs. Lally and Nevitt contend that the officers' available vacation time was not reduced; and that they were paid their full salary while attending the convention.

Ms. Hillman, during her investigation, had many conversations with the Local's Officers, "virtually all with [Local 783's] Secretary-Treasurer Jerry Vincent" (Statement of Peggy Hillman at p.1) and received a letter from Mr. Vincent that addressed the issue before me. He did not include in that letter any statement about vacation time. Given the factual dispute, I directed Messrs. Vincent and Norris to make available to Ms. Hillman any records supportive of their position relating to the Local's past practice with respect to the "vacation" issue; and directed that the Election Office report its findings to me.

Messrs. Vincent and Morris did not properly comply with my directive by sending their submissions to Ms. Hillman; however, they did send materials allegedly supportive of their position directly to me. Copy attached hereto as Exhibit B. Upon receipt, I forwarded said materials to the Election Office and reiterated my instruction that it report its findings to me. Thereafter, also having received a copy of these materials, Mr. Lally sent me and the Election Office a submission which refuted the Local's position. Copy attached hereto as Exhibit C. Subsequently, I received a letter (copy attached hereto as Exhibit D) from Mr. Holland, the Election Officer, setting forth his position with respect to the above-referenced submissions. After receipt of Mr. Holland's submission, I received the written statement of Ms. Hillman. See Exhibit A.

The Local's submitted photostatic copies of the original documents, assuming they are genuine reproductions of the original documents as they existed in 1986, do not demonstrate that the officers had their available vacation time reduced for the time they spent in attendance at the 1986 IBT International Convention. However, Mr. Lally's submission speaks directly to the issue. In a letter signed by Sondra G. Stivers (part of Mr. Lally's submission), she indicates that from January 1983 until January 1990, she "kept the books and performed all payroll functions for the Local Union." Ms. Stivers adds:

I hereby attest that when the delegates attended the Teamster Convention in 1986, they did not use vacation

time for the time spent at the convention. Further, I worked for the Teamsters through two prior International conventions, and I can assure you that the Executive Board members who attended the convention as delegates and/or alternates, never took this time as vacation time. The convention has always been considered by them to be time worked.

At the hearing, I specifically instructed the Local's Officers to produce, if they could, payroll records or ledgers which would support their position concerning the "vacation pay" issue. They have not done so. Ms. Stivers' letter illustrates why the Local was unable to produce such records or, decided not to produce them. Ms. Stivers states that:

[A]t Mr. Jerry Vincent's direction, when I began doing payroll in 1989, he instructed me to indicate on all pay check stubs and also on the hand-written payroll ledger record of each employee, vacation pay when taken. The hand-written payroll ledgers for the year in question can verify when or if vacation was taken. These records could easily be produced by the Local Union staff if you request it.

Ms. Stivers' letter is to be accorded significant weight because, as she further states:

I personally handled all reservations (both plane and lodging) and also expense allowance checks and hereby can submit this statement without reservation, since I had first-hand, personal knowledge of all aspects in preparation of the convention.

I find unpersuasive the new evidence submitted by Mr. Vincent and the Local. During Ms. Hillman's investigation, the Local clearly took the position that representatives to the 1986 convention were paid their wages only because they were salaried officers, not hourly workers who could "afford," to work overtime and make up for the money lost. See Election Officer's January 14,

1991, Decision, p.2, See Also, "Statement of Peggy Hillman," Exhibit A, pp. 1-2. When the Local discovered that its position on the issue, which is inequitable at best, and discriminatory at worst, would not defeat Mr. Lally's protest, the Local's officers devised a new strategy which included introducing a new position: that they reduced their available vacation time to receive full salary while attending the 1986 Convention. When called upon to produce payroll or other records in support of their new position, the Local failed to do so. I conclude that Messrs. Vincent's and Norris' time wages (salaries) were paid while they attended the 1986 Convention and their available vacation time was not reduced. Thus, as it was past practice of the Local to pay time wages while delegates attend IBT Conventions, the Local must pay the time wage for Mr. Lally and other delegates to attend the 1991 Convention. Of course, if Messrs. Vincent and Norris prevail in the election, they are to be treated in the same manner.

Turning to the issue of other expenses (hotel cost, meals, travel, etc.), I adopt and now issue as mine the following determination of the Election Officer:

The Local has indicated that it intends to pay reasonable expenses associated with hotel costs and meals. The Election Officer will review protests should the Local fail to reimburse appropriately at the time vouchers or expense forms are submitted. The Election Officer notes that in many cases air fare may actually be a less expensive, and thus reasonable means of transportation as travel by car. The Election Officer will consider failure to pay reasonable travel expenses based solely on the mode of transportation utilized a violation of the Rules.

The past treatment by the Local of officers may not be distinguished from that to be accorded to delegates or alternate delegates to the 1991 IBT International Convention. This extends to mode of travel as well. Requiring a delegate to drive rather than fly is unreasonable and violative of the Election Rules.

The decision of the Election Officer is affirmed.

Accordingly, the Local shall continue its past practice of paying time wages (be they salary or hourly wages) and expenses (as outlined above) to all members who attend the 1991 IBT International Convention as delegates or alternate delegates.


Frederick B. Lacey
Independent Administrator

Date: January 25, 1991.