

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

August 6, 1991

VIA UPS OVERNIGHT

Gerald Moerler
13104 Glen Ct. #40
Chino Hills, CA 91709

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

Ray Nickum
c/o The Informed Teamsters
for the Good of All Slate
8747 Imperial Highway
Apt. #2
Downey, CA 90242

Re: Election Office Case No. P-747-LU63-CLA

Gentlemen:

A protest was filed with the Election Officer pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*"). In his protest Gerald Moerler alleges that the *Rules* were violated as a result of Mr. Robert Vogel's representation of the interests of the Informed Teamsters for the Good of All Slate ("*Informed Teamsters Slate*") at the expense of Local Union 63. The Election Officer's investigation of this protest revealed the following.

Mr. Robert Vogel is a partner in the law firm of Wohlner, Kaplon, Phillips, Vogel, Shelley & Young. Mr. Vogel is counsel to Local Union 63. Mr. Vogel and his firm are compensated on a retainer basis for the bulk of the professional services preformed for the Local Union. The firm also charges the Local Union for professional services on a hourly basis for certain litigation matters. Mr. Vogel's hourly rate for professional services is \$160.00 per hour. Other members and associates in his firm have differing rates.

Mr. Vogel has appeared in a number of matters before the Election Officer and the Independent Administrator involving Local Union 63 and its members. In several of these cases Mr. Vogel has represented the interests of Local Union 63. For example, in P-775-LU63-CLA, Mr. Vogel represented the Local Union 63 in response to allegations that the Union had improperly sold copies of a list of telephone numbers of its members to one slate of candidates and not another. Similarly, in P-123-LU63-

CLA, P-127-LU63-CLA and P-564-LU63-CLA Mr. Vogel represented the interest of the Local Union in cases alleging the Local Union's violation of the *Rules* resulting from the Union's failure to provide complete and accurate work site list to candidates who requested that information. Similarly, Mr. Vogel represented the institution interests of the Local in the Election Office Case Nos. Election Office Case No. Post-61-LU63-CLA and Election Office Case No. P-683-LU63-CLA (incorrect ballot format allegedly confusing voters); Election Office Case No. P-713-LU63-CLA (requiring Local Union to implement remedy); Election Office Case No. P-714-LU63-CLA (unsubstantiated allegation of use of Union funds for campaign mailing); Election Office Case No. P-780-LU63-CLA (alleged improper use of work site list by candidate).¹

In addition to representing the institutional interests of Local Union 63 in matters before the Election Officer and the Independent Administrator, Mr. Vogel has been involved in matters representing the interests of the Informed Teamsters for the Good of All Slate ("Informed Teamsters Slate") and their supporters. For example, in Election Office Case No. P-768-LU63-CLA, affirmed 91-Elec. App.-153 (SA), the Independent Administrator held, at the request of the Election Officer, that Mr. Vogel was representing the interests of the Informed Teamsters Slate and its supporters in a protest alleging that these individuals had engaged in ballot solicitation and collection and ordering the Informed Teamsters Slate to bear the costs of the remedial order. The Independent Administrator held that because Mr. Vogel was in fact representing the interests of the Slate, even though his services were paid for by the Local Union, the Slate was required to pay for that representation.

In his investigation of the instant protest the Election Officer reviewed all matters involving Local Union 63 and its members in which Mr. Vogel participated. In addition, the Election Officer reviewed other cases involving Local Union 63 where Mr. Vogel had not made a formal appearance but in which the Election Officer had reason to believe that Mr. Vogel advised the parties or participated in drafting submissions. As a result of that review the Election Officer concluded that in addition to the initial ballot collecting case cited above, Election Office Case No. P-768-LU63-CLA, for which a separate remedy has been imposed, Mr. Vogel represented the interests of the Informed Teamsters Slate in the post-election protest filed in Election Office Case No. Post-73-LU63-CLA.²

¹The institutional interest of the Union are implicated in a protest when the protest challenges, for instance, the Union's performance of its obligations under the *Rules*, e.g. posting, review of collective bargaining agreements, work site lists. Similarly, where the protest implicates the propriety of the use of resources unique to the Union, e.g. membership lists, dues records, work site lists, the Union's institutional interest are normally at stake. See also 91-Elec.App.-172.

²As the earlier delineation of the various Election Office Cases in which Mr. Vogel participated demonstrates, the Election Officer found that Mr. Vogel acted on behalf of the interests of Local 63 as an entity in all other matters.

While Mr. Vogel did not formally appear in Post-73-LU63-CLA, and only monitored the hearing in the appeal from the Election Officer's determination in that case, the Election Officer's investigation revealed that Mr. Vogel drafted one submission to the Election Officer and another submission to the Independent Administrator on behalf of the Informed Teamsters Slate.³ The submissions prepared by Mr. Vogel were the June 13, 1991 letter to Michael H. Holland signed by Ray Nickum and the June 19, 1991 letter to Frederick B. Lacey signed by Bob Doss. Both of these submissions were delivered by Mr. Vogel to Mr. Robert Acquino, the President of Local Union 63. Mr. Acquino in turn caused the submissions to be filed with the Election Officer and the Independent Administrator.

Not only does it appear that Mr. Vogel was representing the interest of the Informed Teamsters Slate, at Local Union expense, in Post-73-LU63-CLA, he did so at the request of the leadership of the Local Union and not members of the Slate. Mr. Vogel prepared the submissions on behalf of the Informed Teamster Slate at the request of the officers of Local Union 63.⁴ Mr. Vogel and his firm are compensated for their services on a retainer basis. Thus, the Local did not expend any additional monies, paid no more than the monthly retainer, despite Mr. Vogel's participation in Post-73-LU63-CLA. It is, however, a violation of the *Rules* to permit one candidate or slate of candidates to utilize the resources of the Union without compensating the Union for such benefit. *Rules*, Article X, § 1(b)(3). Thus, it is appropriate for the beneficiaries of the Union resource to compensate the Union for the market costs of the services provided, regardless of the amount the Union expended for these services. See 91-Elec.App.-153 (SA).

Based on the investigation the Election Officer finds that 7.3 hours of Mr. Vogel's time, and the time of another attorney in Mr. Vogel's office, was spent on the preparation of the submissions on behalf of the Informed Teamsters Slate in Election Office Case No. Post 73-LU63-CLA. Based on the hourly rate for these individuals, \$160.00 for both Mr. Vogel and his associate, the Election Officer finds that the Local Union should be reimbursed in the amount of \$1168.00 for Mr. Vogel's professional services.

³ Mr. Vogel was assisted in the preparation of the submissions by another attorney in his office who performed legal research. That attorney, like Mr. Vogel himself, was compensated for this work by Local Union 63 as part of the retainer arrangement between the Local and Mr. Vogel's firm.

⁴The role of the officers of Local Union 63 in engaging Mr. Vogel's services on behalf of the Informed Teamsters slate, paying for those services with Local Union funds and controlling the submission of pleading to the Election Officer and the Independent Administrator further supports the Election Officer's finding in Election Office Case No. Post-73-LU63-CLA that the Informed Teamsters Slate was controlled by the Local Union's leadership.

However, because Mr. Vogel's representation of the Informed Teamsters Slate was at the request and under the control of the leadership of the Local Union, the Election Officer concludes that it is appropriate for that group, not the members of the Informed Teamsters Slate, to pay the costs of Mr. Vogel's representation. The Election Officer's investigation of a prior protest, Election Office Case No. P-714-LU63-CLA, revealed that the officers, executive board and business agents of Local Union 63 maintain a fund for their political activities within the Local Union.⁵ It is appropriate that the costs associated with Mr. Vogel's representation of the Informed Teamsters Slate, which was an integral part of the Local Union officers' and business agents' political strategy in the delegate election campaign, should be paid out of this fund. Accordingly, the Election Officer will order that the contents of this fund, along with any books and records indicating deposits into and withdrawals from the fund, shall be delivered to a representative of the Election Officer.

Thus, within five days of the receipt of this letter, Mr. Randy Cammack, the custodian of the fund, shall deliver the total contents of the Local 63 re-election fund as well as all books and records relating to that fund to Adjunct Coordinator Michael Franklin at 16450 Sunset Boulevard, Suite 301, Pacific Palisades, California 90272. The Election Officer shall transfer to Local Union 63 from the "Local 63 re-election fund" the sum of \$1168.00 as reimbursement for the services provided by Mr. Vogel on behalf of the Informed Teamsters Slate in Election Office Case No. Post-73-LU63-CLA.

As noted above and as determined by the Election Officer in Election Office Case No. Post-73-LU63-CLA, affirmed 91-Elec.App.-167 (SA), the Informed Teamsters Slate was but an arm or agent of Local Union 63's officers. The Local Union officers selected the candidates and directed and controlled their activities. Therefore, it is appropriate that these officers bear some financial responsibility for the remedies previously imposed on the Informed Teamsters Slate. Accordingly, the Election Officer shall retain possession of any funds of the Local 63 re-election fund remaining after the payment of Mr. Vogel's services to satisfy the remedies imposed against the Informed Teamsters slate or its supporters for violations of the *Rules* in Election Office Case No. P-763-LU63-CLA as well as the additional remedies imposed by the Independent Administrator in 91-Elec.App.-153 (SA) and 91-Elec.App.-167 (SA).

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

⁵ The investigation revealed that the fund was kept in a safe deposit box at the Security Pacific Bank in Rialto, CA. The fund has been described as the "Local 63 re-election fund" by its custodian Randy Cammack, a Vice-President and Business Agent of the Local Union.

Gerald Moerler
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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,

A handwritten signature in black ink, appearing to read "Michael H. Holland". The signature is stylized and fluid, with a long horizontal stroke at the end.

Michael H. Holland

MHH/mjv

cc: Frederick B. Lacey, Independent Administrator, IBT
Geraldine L. Leshin, Regional Coordinator
Robert Marciel, Secretary-Treasurer, IBT Local Union 63
Randy Cammack, Vice President and Business Agent, IBT Local Union 63
Michael Franklin, Adjunct Regional Coordinator
16450 Sunset Blvd., Suite 301
Pacific Palisades, CA 90272
Susan Jennik, Esq.
Association for Union Democracy
500 State St.
Brooklyn, NY 11217
Robert D. Vogel, Esq.
Wohlner, Kaplon, Phillips,
Vogel, Shelley & Young
16760 Ventura Boulevard
Suite 1510
Encino, CA 91436

P-747

IN RE:	:	91 - Elec. App. - 184 (SA)
GERALD MOERLER,	:	DECISION OF THE
AND	:	INDEPENDENT
RAY NICKUM	:	ADMINISTRATOR

This matter arises out of an appeal from a compliance decision of the Election Officer in Case No. P-747-LU63-CLA. A hearing was held before me at which the following persons were heard by way of telephone conference: Susan Jennik on behalf of the Complainant Gerald Moerler; Mr. Moerler himself; Everett "Jim" Roberts, Local 63's Temporary Trustee; Robert Vogel, on behalf of Local 63; former officers and business agents of Local 63, Danny Torres, Robert Acquino, Randy Cammack, and John DeWorken; Regional Coordinator Geraldine Leshin; Adjunct Regional Coordinator Michael Franklin; and John Sullivan and Barbara Hillman on behalf of the Election Office.

On August 6, 1991, the Election Officer ordered the total contents of two election funds maintained by Local 63, as well as all books and records relating to those funds, to be delivered to a representative of the Election Officer. The Election Officer took this action to aid compliance with certain financial sanctions that had been imposed on the officers and business agents of Local

63 and the Informed Teamsters For The Good Of All Slate (the "Informed Teamsters Slate").

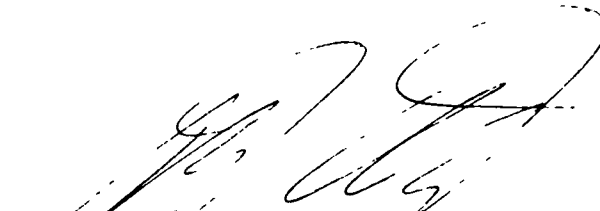
After reviewing the contents of the funds, as well as the books and records, the Election Officer found that \$1,585.22 was the total net balance of both funds. The Election Officer found that approximately \$13,000 had been spent on campaign expenses and approximately \$8,000 had been refunded to various contributors to the funds.¹ The majority of these refunds were made on July 8, 1991.

The complainant argues that the monies refunded should be disgorged and used to satisfy the sanctions previously imposed on the Informed Teamster Slate and the Local 63 officers and business agents. In making this argument the complainant suggests that the refunds were made with the specific intent of avoiding the sanctions. This suggestion is simply not supported by the record or the underlying facts. At the time the refunds were made no decision had issued suggesting that the election funds would be used as a ready source of monies to satisfy the sanctions. The stated reason for making the refunds -- that many of the officers and business agents who had contributed to the funds had recently

¹ At the hearing the Election Officer acknowledged that there was an arithmetical error in his decision regarding the exact amounts of the campaign expenditures and the refunds. The Election Officer did confirm, however, that after deducting the amounts for campaign expenses and refunds the total monies remaining in the funds constituted \$1,585.22.

lost their jobs and thus needed the money -- is clearly supported
in record.

Accordingly, the Election Officer's denial of this
protest is affirmed.



Independent Administrator
Frederick B. Lacey
By: Stuart Alderoty, Designee

Date: September 16, 1991