

OFFICE OF THE ELECTION OFFICER
% INT'NATIONAL BROTHERHOOD OF TEACHERS
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Michael H. Holland
Election Officer

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May 10, 1991

Via Fax and UPS Next Day Air

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

Robert Marciel
Secretary-Treasurer
IBT Local Union 63
1616 W. Ninth Street
Room 205
Los Angeles, CA 90015

George Misso, Operations Manager
Transportation Department
Vons Grocery Co.
6211 East Slauson
City of Commerce, CA 90040

Re: Election Office Case No. P-754-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 ("Election Rules"), a copy of which is enclosed. In his protest, Gerald Moerler alleges that his request for "union leave" to campaign in the upcoming Local Union 63 delegate election was denied by his employer, Vons Grocery Co., in violation of the Election Rules. The Election Officer's investigation revealed the following.

Mr. Moerler is a candidate for delegate to the 1991 IBT International Convention and a member of the "Delegate for Ron Carey Slate". Mr. Moerler is employed by Vons Grocery at its Boxford facility and works a 9 am to 5 pm shift. On May 3, 1991 Moerler submitted a written request to his employer for a ten day unpaid leave of absence, starting on May 6, 1991 and continuing until May 15, 1991. In his request Mr. Moerler stated that he was requesting the leave of absence for "campaigning and observing".

On May 4, 1991 Moerler was informed by the supervisor of the Boxford facility that he would have to submit a request for a leave of absence for a 14 day period. In response to these instructions Moerler submitted an expanded request for leave for the period from May 6, 1991 through May 19, 1991. Mr. Moerler took unpaid leave on May 6, 7 and 8, 1991.

At approximately 4:40 pm on May 8, 1991. Moerler received a mailgram from the Vons transportation department informing him that his request for a leave of absence had been denied and that if he failed to report for work within 72 hours his employment would be terminated. May 9, 1991 was Mr. Moerler's regularly scheduled day off. The ballots in the Local Union 63 delegate election are being processed and mailed on May 10, 13, 14, and 15, 1991. The ballots will be counted on May 31, 1991.

Pursuant to an agreement with the Election Officer, Vons has granted Mr. Moerler's request for a leave of absence for May 10, 13, 14 and 15, 1991.¹ While Mr. Moerler has not yet submitted a written request for a leave of absence for May 31, 1991, the Election Officer has been assured by Vons that if such a request is made it will be granted.

Mr. Moerler alleges that Vons violated the Election Rules because it denied his request for a leave of absence for "union business". The only reference to time off from work for union business in the Election Rules appears at Article IX, Section 1 (c). That Section provides that time spent observing any aspect of the election process shall be considered as time spent on union business. The rule also provides that, upon written request, the Union shall certify to the observer's employer that the member is absent from work for official union business. However, the Election Rules specifically state that "[n]o observer shall use this privilege for the purpose of campaigning". Therefore the Election Rules do not require the grant of Union leave for the purpose of campaigning. See e.g. In Re Nathaniel Smith, 90-Elec. App.-20 (12/21/90).

While the collective bargaining agreement between the IBT and Vons may permit employees to request unpaid leave for any purpose, the Election Rules only require unpaid leave for "union business" to permit a candidate or his designee to observe the election process.² The Election Officer has determined that the ballots in the Local Union 63 delegate election will be prepared, mailed and counted on May 10, 13, 14, 15 and 31, 1991. Therefore, a leave of

¹ While Mr. Moerler alleges in his protest that "[i]t is very likely that I will now be penalized for the time I have already taken off". The Election Officer has no reason to believe that Mr. Moerler will be penalized in any way by Vons for the unpaid leave he took on May 6, 7, and 8, 1991. If penalties are imposed, and Mr. Moerler believes such imposition is in violation of the Rules, a new protest may be filed.

² The Election Rules also define "union business" to include attendance at the 1991 IBT International Convention.

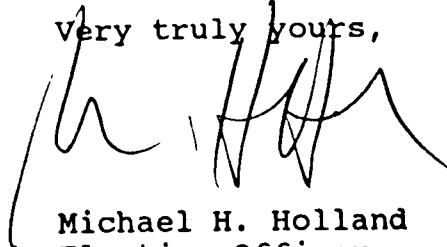
Gerald Moerler
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absence for union business on those days is consistent with the Election Rules.

Because Mr. Moerler's initial request for a leave of absence starting on May 6 and continuing until May 15, 1991 has been granted by his employer, the Election Officer consider this matter resolved.

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
Election Officer

cc: Frederick B. Lacey, Independent Administrator, IBT
Geraldine Leshin, Regional Coordinator
Gerry L. Fellman, Adjunct Regional Coordinator
Ted Harrison, Esq.
Susan Jennik, Esq.