

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

Michael H. Holland
Election Officer

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May 31, 1991

VIA UPS OVERNIGHT

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

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

Re: Election Office Case No. P-775-LU63-CLA

Gentlemen:

A protest has been filed pursuant to Article XI, §1 of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*"). In his protest, Gerald Moerler, a candidate on the Delegates for Ron Carey Slate (Carey Slate), claims that Local Union 63 has supported the Informed Teamsters for the Good of All Slate (Informed Teamsters Slate), through contributions impermissible under the *Rules*.

The protest was investigated by Regional Coordinator Geraldine Leshin and the Staff of the Election Officer. Moerler alleges that the Local Union has contributed to the campaign of the Informed Teamsters Slate by authorizing vacation leave for officers, staff, and business agents of Local 63, so that they could campaign for the Informed Teamsters Slate; by permitting the Business Agents to use vehicles supplied by the Union for campaign purposes; and by supplying the Informed Teamsters Slate with membership lists and phone numbers while failing to provide the same information to the Carey Slate.

The investigation of these allegations discloses the following facts: during the week of May 13 - May 19, 1991 the President, Secretary-Treasurer and various business agents of Local 63 did take vacations to which they were otherwise entitled from Local 63. During their vacations, they did in fact campaign for the Informed Teamsters. Further, these officers and business agents campaigned in vehicles supplied by the Local.

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Local 63 by-laws authorize the Local to furnish officers and business agents with automobiles which can be used for personal business. To the extent the automobiles are used for such personal business, the value of such use is considered part of the remuneration received by such officers and business agents and so reported to the appropriate taxing authorities. Under these circumstances, use of a Union provided automobile for campaign purposes does not constitute a campaign contribution by the Union and does not violate the *Rules*. In re Gregory, 91-Elec.App.-135 (April 29, 1991).

Similarly, campaigning during a vacation period does not violate the ban on Union contributions under Article X of the *Rules*. While the *Rules* prohibit campaigning during time that is paid for by the Union or an employer, campaigning during paid vacation, lunch hour or breaks, or similar paid time off is, however, expressly permitted under the *Rules*. *Rules*, Article VIII, §§ 10(a) and (b). Thus, the fact that in this case officers, staff, and/or business agents of the Local have used paid vacation leave to campaign for the Informed Teamsters Slate does not constitute a violation of the *Rules*.

Based on the above, this aspect of the protest is DENIED.

The investigation of Moerler's allegation that the Local provided membership lists and phone numbers to the Informed Teamsters Slate discloses the following facts: Robert Vogel, attorney for the Local, states that membership lists as well as members' phone numbers were purchased from the Local by the Informed Teamsters Slate on May 3, 1991 for the sum of \$75.00. The Election Officer is still attempting to verify whether the list was purchased by the Informed Teamsters Slate or provided by the Local free of charge.

The Local did not notify the Carey Slate that they could likewise purchase or obtain the lists. The Local alleges that it assumed that such membership information had been provided to the Carey Slate by accredited General President candidate Ron Carey. Accredited IBT General President candidate Carey did receive from the Election Officer, pursuant to Article VIII, § 2(a) of the *Rules*, a list of the names and addresses of IBT members. [This list does not contain phone numbers.] Whether or not the Carey Slate obtained the list, from Mr. Carey or his campaign, the Carey Slate does not have the phone numbers of the membership of Local 63 and thus does not have the means to telephone for campaign purposes.

Vogel states further that business agents who support the Informed Teamsters Slate have made phone calls with the use of the lists. He contends that the phone calls were made from the business agents' home phones, rather than from the Union office phones. Both the Informed Teamsters Slate and the Local deny that any Union monies were expended for telephoning. The Election Officer investigation uncovered no evidence that Union resources were used in making telephone calls.

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After the filing of this protest, on May 23, 1991, Moerler was informed of his right to request from the Local Union the Local's membership list, including the members' telephone numbers, and, upon payment of \$75.00, receive such list from the Local. Moerler declined to do so at that time. The mail ballots before the rerun election had been mailed on May 13, 1991 and therefore he contended that by May 23, 1991, or the date where he would first receive the lists, most of the ballots would already have been voted and returned. Thus, he stated that obtaining the membership lists plus phone numbers after May 23 would be too late for their use in campaigning.

The *Rules* prohibit the use of Union property or facilities in connection with any election campaign unless all candidates are provided equal access. *Rules*, Article X, § 1(b)(3). While the *Rules* do not require any Local to make its membership list available to any candidate, if the Local makes such list available to a candidate, all candidates must be provided the same opportunity. *Rules*, Article VIII, § 2(a). The Election Officer's investigation does not disclose that Moerler ever requested a copy of Local 63's membership list or the phone numbers of the Local's members from the Local Union. However, Article VIII, § 10(c) of the *Rules* requires the Local to notify all candidates in advance of the availability of and their ability to utilize Union funds, facilities, etc. to assist in campaigning. Local 63 did not notify Moerler or the Carey Slate of their ability to purchase the membership list, including phone numbers, from the Local Union prior to or at the time such list was provided to the Informed Teamsters Slate.

In accordance with the foregoing, the Election Officer finds that the *Rules* were violated by Local 63 when it provided the Local's membership list, including phone numbers, to the Informed Teamsters Slate without notifying the Carey Slate of the availability of such lists. Thus, this aspect of the protest is GRANTED.

The Election Officer notes however that Moerler has now been offered the opportunity to purchase such membership lists from Local 63 but has declined to do so given the date when he was first so notified. Thus, on a pre-election basis, the *Rules* violation has been cured. The Election Officer does not now, however, determine whether the offer to Moerler came too late and/or whether the failure of the Local to notify Moerler or the Carey Slate of the availability of these membership lists at the time such lists were provided to the Informed Teamsters Slate may have had an affect on this rerun election. Moerler and/or other members or supporters of the Carey Slate will be permitted to raise this matter in any post-election protest timely filed by them.

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,

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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 'MHH', with a long horizontal flourish extending to the right.

Michael H. Holland

MHH/pjm

cc: Frederick B. Lacey, Independent Administrator
Geraldine L. Leshin, Regional Coordinator

RECEIVED
JUN 13 1991

IN RE:

GERALD MOERLER

and

ROBERT MARCIEL
IBT LOCAL UNION NO. 63

91 - Elec. App. - 160 (SA)

DECISION OF THE
INDEPENDENT
ADMINISTRATOR

This matter arises out of an appeal from a Decision of the Election Officer in Case No. P-775-LU63-CLA. A hearing was held before me by way of telephone conference on June 10, 1991, at which the following persons were heard: Susan Jennik, on behalf of the complainant, Gerald Moerler; Mr. Moerler, himself; and Robert Vogel, on behalf of Local 63. John J. Sullivan, on behalf of the Election Officer, appeared in person. Geraldine Leshin and Don Twohey, Regional Coordinators for the Election Office, and Mary Joyce Carlson, member of the Election Officer's staff in Washington, D.C., also audited the hearing.

The salient facts underlying this appeal are not in dispute. The relevant facts are set forth in the Election Officer's Summary as follows:

On or about May 3, 1991, Local Union 63 either gave or sold to the Informed Teamsters for the Good of All Slate (herein the "Informed Teamsters" slate) a membership list as well as the phone numbers of the

members of the Local. Although counsel for the Local advised the Election Office that the slate paid \$75 for this resource, the Election Officer has not yet been able to verify that the Local actually charged for it.

It is undisputed that at the time the Local provided members' names and phone numbers to the Informed Teamsters slate, it did not advise the opposing Delegates for Ron Carey slate that it was making this resource available to candidates.

As further explained by the Election Officer:

This protest was filed on or about May 21, 1991. On May 23, Mr. Moerler was advised that he was entitled to the same membership list, including phone numbers, that was provided the opposing slate, on the same terms. Because the ballots for the re-run election had been mailed 10 days before, on May 13, 1991, Mr. Moerler objected that most of the ballots would have already been cast and declined to pay \$75 for the list at that point.

The two relevant provisions of the Rules For The IBT International Union Delegate And Officer Election (the "Election Rules") are highlighted by the Election Officer in his Summary:

Article VIII, Section 2(a) of the Rules provides that while Local Unions are not required to provide membership lists to candidates, it "shall not, in any way, discriminate with respect to the use of the membership list."

In addition, Article VIII, Section 10(c) provides that the resources of the Union "may not be used to assist in campaigning unless . . . such goods and services are equally available to all candidates and all candidates are notified in advance of the availability of such goods and services."

Local 63 does not dispute the fact that if the Local permits one candidate the opportunity to purchase its membership list, all candidates must be afforded the same privilege. Local 63 does contend, however, that it is not obligated to notify all candidates

of the opportunity to purchase the list. In support of this argument, the Local relies on Article VIII, Section 2.a. of the Election Rules. The Local correctly notes that this provision, governing the right of candidates to inspect membership list, does not place the burden on the Local of notifying candidates of their right to inspect such list. As stated by the Local in its June 7, 1991, Letter Memorandum:

Significantly, Article VIII, Section 2 only provides candidates to be treated equally and no disparate treatment or discrimination occur. It does not state if the list is going to be provided to a candidate, all candidates must be affirmatively apprised of such by the Union in advance of any candidate being given the list. Clearly, if the Rule was to be interpreted and applied in that fashion, it would have expressly said so.

In resolving this appeal, I need not decide whether Local 63's interpretation of Article VIII, Section 2.a. is correct. That provision does not apply here. Article VIII, Section 2.a. defines a membership list as "a list containing the last known names and addresses of all members of the Union who are to participate in such election." This provision does not contemplate that a membership list will include phone numbers and, indeed, the inclusion of phone numbers on the list in question makes it something more than a "membership list."

This appeal is governed by Article VIII, Section 10.c. of the Election Rules. As observed by the Election Officer, this provision prohibits a Union from using its resources to "assist in campaigning unless . . . such goods and services are equally

available to all candidates and all candidates are notified in advance of the availability of such goods and services." (Emphasis supplied.) By giving to the Informed Teamsters the phone numbers of the members, the Local was indeed assisting the campaign of the Informed Teamsters beyond that contemplated by the membership list provision in Article VIII, Section 2.a. Thus, it was obligated to notify the Ron Carey slate that such information was available.

Accordingly, I agree with the Election Officer's conclusion that the Local violated the Election Rules by furnishing the membership list replete with phone numbers to one slate without advising the opposing slate in advance that such a list was available.

The opportunity afforded Mr. Moerler on May 23, to purchase the same list provided to the Informed Teamsters came too late for allow his slate the same opportunity to campaign by phone that the Informed Teamsters were given. Thus, an effective remedy could not be imposed pre-election. Accordingly, the Election Officer reserved the right to revisit this matter post-election in the event Mr. Moerler, or any member of his slate, is unsuccessful in the election and a post-election protest is filed charging that Local 63's violation of the Election Rules "may have affected the outcome of the election." See Election Rules, Article XI, Section 1.b.(2).

The Election Officer's approach here is the correct one. Accordingly, his treatment of this protest is affirmed in all respects.¹

Stuart Alderoty 1521
Frederick B. Lacey
Independent Administrator
By: Stuart Alderoty, Designee

Dated: June 12, 1991

¹ By facsimile transmission on June 11, 1991, I received a letter from Mr. Vogel stating that following the hearing, he spoke with the Secretary-Treasurer of the Local and was told that the Informed Teamsters only purchased labels containing the names and addresses of members -- not phone numbers. I reject this late submission by Mr. Vogel. The Election Officer's investigation revealed that phone numbers were provided. This was not disputed at the hearing. There is no reason to disturb that finding now. If Local 63 had any exculpatory evidence, it should have been provided to the Election Officer during his investigation.