

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

September 25, 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

Vons Grocery Co.
4344 Shirley Ave.
El Monte, CA 91731

Re: Election Office Case No. P-882-LU63-CLA

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Gerald Moerler, a member of Local 63. In his protest, Mr. Moerler claims that the employees' use of an employee bulletin board located at Vons Company, Inc. ("Vons") has been chilled because of the difficulty in obtaining access to the board, and because of the company's insistence on placing company information on the bulletin board. Mr. Moerler also claims Vons has prevented him from posting campaign literature on the board, and has removed, or permitted others to remove his campaign literature from the bulletin board. Mr. Moerler alleges that the company's action violates Article VIII § 10 of the *Rules* as well as the Election Officer's decision in Election Office Cases Nos. P-211-LU63-CLA and P-414-LU63-CLA, affirmed 91-Elec. App.-75.

Gerry Fellman, the Election Office Adjunct Regional Coordinator, conducted an investigation concerning the charges raised by Mr. Moerler. Mr. Fellman's investigation revealed the following facts.

Mr. Moerler is employed by Vons Company, Inc. and works at Vons' El Monte facility. On August 24, 1991 Mr. Moerler went to Vons' Santa Fe Springs plant for the purposes of posting campaign literature and information on a proposed contract on a

bulletin board in the employees' drivers room.¹ Although Mr. Moerler is not an employee of the Santa Fe Springs facility, the Election Officer held in Election Office Case No. P-638-LU63-CLA that Mr. Moerler was entitled to post campaign literature in the drivers room at the Santa Fe Springs facility since the Election Officer found a limited past practice permitting Vons' employees to have access to the interior of Vons' facilities other than their own facility during working hours. The Election Officer went on to state that "The right of access was limited to the entry into Vons facilities for the purpose of posting of campaign literature on general purpose bulletin boards." Election Office Case No. P-638-LU63-CLA, May 7, 1991.

When Mr. Moerler arrived at the Santa Fe Springs facility, he contacted, Floyd Stein, the company supervisor, and requested that Mr. Stein open the locked bulletin board so that he could post his literature. Mr. Moerler states that he asked the Vons' supervisor approximately three times during a fifteen minute period for the keys to the board and the supervisor stated that he could not locate the keys and that he was too busy with company business to take time out to find them. The supervisor, Mr. Floyd, also informed Mr. Moerler that he would review the literature and after such review, he would post it on the bulletin board. Mr. Moerler stated that to the best of his knowledge, the literature was posted on the bulletin board by the following day, August 25, 1991. Mr. Moerler objects to the fact that the company insisted on reviewing his literature prior to posting as well as the fact that his literature was not posted immediately upon request.

The employee bulletin board in the drivers room at the Santa Fe Springs facility was the subject of protests in Election Office Case Nos. P-211-LU63-CLA and P-414-LU63-CLA, consolidated for decision. In resolution of those protests, Vons agreed to install a glass-encased locked employee bulletin board in the drivers room. Both Local 63 and Vons further agreed to refrain from posting any Union notices or employer information on the bulletin board to ensure that IBT members had adequate space to post campaign literature². The decision further permitted campaign literature to remain posted

¹ Collective bargaining negotiations or ratification voting on collective bargaining contracts are beyond the jurisdiction of the Election Officer. Accordingly, the right of Mr. Moerler to post literature related to these matters is not subject to the protest procedure of the *Rules*. However, Mr. Moerler here sought to post simultaneously both election campaign material - a matter clearly within the Election Officer's jurisdiction - and a contract related item. The Election Officer's investigation and decision is confined to the issue of the posting of campaign material.

² In Election Office Case Nos. P-211-LU63-CLA and P-414-LU63-CLA Vons agreed to post a notice on its bulletin board stating that the company had agreed to "direct its supervisory and other employees who are not represented by the Teamsters Union, not to post anything on the employee bulletin board in or around the driver room in Santa Fe Springs or El Monte California. (Notice to all IBT members of IBT Local Union 63. Election Office Case Nos. P-211-LU63-CLA and P-414-LU63-CLA, February 8, 1991)

for a period of thirty days.

The evidence submitted by Mr. Moerler does not substantiate his claim that the employer's policy operates to chill employees political rights. The investigation disclosed that Vons routinely reviews campaign literature prior to its posting on the bulletin board to insure that no obscene or anti-company literature is posted. There is no evidence that the company has censored or refused to post any materials after such review. It does not violate the *Rules* for an employer to refuse to post obscenities or material which disparages it or its products or services. NLRB v Electrical Workers, Local 1229, 346 U.S. 464 (1953). Moreover, the company has a legitimate interest in ensuring that literature posted on the employee bulletin board conforms to the Election Officer's decision in Election Office Case Nos. P-211-LU63-CLA and P-414-LU63-CLA.

The facts establish that the company did not engage in any unreasonable delays in posting the literature. Mr. Moerler concedes that the literature was posted by the next day, August 25, 1991. Accordingly, the Election Officer concludes, based on the evidence submitted, that the company did not violate the *Rules* or the Election Officer's decision in Election Office Case Nos. P-211-LU63-CLA and P-414-LU63-CLA by requesting an opportunity to review the literature prior to its posting or by delaying the posting of the literature by one day.³

Mr. Moerler also claims that his campaign literature has repeatedly been removed from the employee bulletin board in violation of the prior agreement and Election Officer decision requiring that literature remain posted on the board for a period of 30 days. Mr. Moerler argues that since the company possesses the keys to the bulletin board, the company must either remove Mr. Moerler's literature, or permit other employees to remove the literature.

During the investigation of this protest, no evidence was presented refuting Mr. Moerler's statements that the campaign literature he posted, or which had been posted on his behalf, had been removed from the bulletin board prior to the expiration of thirty (30) days. Thirty (30) days was the period during which campaign literature could remain posted on the bulletin board by reason of the Election Officer's decision in Election Office Case Nos. P-211-LU63-CLA and P-414-LU63-CLA. Further, by its agreement, and the terms of that decision, Vons agreed to assume responsibility for providing access to the bulletin board and retaining and maintaining the key to such bulletin board. Without a Vons supervisor opening the bulletin board, no employee has access to that board. Campaign literature can only be removed from the bulletin board if Vons removes it or acquiesces when other employees - for whom a Vons' supervisor

³ With respect to Mr. Moerler's claim that the company's decision to install a locked bulletin board as well as its overall policy concerning access to the bulletin board chills members political rights, the Election Officer notes that such claims were reviewed and rejected by the Election Officer and the Independent Administrator in Election Office Case Nos. P-211-LU63-CLA and P-414-LU63-CLA, affirmed 91-Elec. App.-75.

has opened the bulletin board - remove the materials. Accordingly, the Election Officer determines that the failure of Vons to properly ensure that Mr. Moerler's campaign literature remains posted on the bulletin board for the agreed thirty (30) day period violates the Election Officer's earlier decision in Election Office Case Nos. P-211-LU63-CLA and P-414-LU63-CLA and thereby violates the *Rules*.

The Election Officer's investigation also disclosed that Vons placed two company plaques, containing certificates of good driving issued to two Vons' employees, on the bulletin board. As noted above, the decision of the Election Officer in Election Office Case Nos. P-211-LU63-CLA and P-414-LU63-CLA, in accordance with Vons' agreement, provided that the bulletin board were to be utilized solely for campaign purposes and neither official Union or company materials were to be posted on the board. Accordingly, Vons utilization of the bulletin board for company plaques constitutes a violation of the Election Officer's earlier decisions and thus a violation of the *Rules*.

As a remedy for the violations found here, the Election Officer directs Vons Company, Inc. to distribute to all IBT members employed by it at its Santa Fe Springs facility any campaign material that Mr. Moerler wishes such IBT members to receive. The literature shall be prepared by Mr. Moerler and given by him to the company for such distribution. The literature shall be no longer than one (1) page, 8½ by 11 inches in size, but may be printed on both sides. The literature shall contain a prominent and legible disclaimer, printed in at least 20 point type, stating "Campaign literature, the contents of which are not endorsed by the IBT, Local Union 63 or Vons Company, Inc." A copy of the campaign literature shall be simultaneously provided by Mr. Moerler to the Election Officer.

Vons shall distribute such literature, as directed above, with the paycheck first issued after its receipt of such literature from Mr. Moerler, unless the literature is received within seven (7) days of the date of paycheck distribution in which case the literature shall be distributed with the following paycheck. Within three (3) days after the literature is distributed, in compliance with this decision, Vons shall submit an affidavit to the Election Officer demonstrating such compliance and indicating the date on which the campaign material was distributed.

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.

Gerald Moerler
Page 5

Very truly yours,

A handwritten signature in black ink, appearing to read "M. H. Holland". The signature is fluid and cursive, with a large initial "M" and "H".

Michael H. Holland

MHH/mjv

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

IN RE:

GERALD MOERLER

and

VONS COMPANIES, INC.

and

IBT LOCAL UNION NO. 63

91 - Elec. App. - 222 (SA)

DECISION OF THE
INDEPENDENT ADMINISTRATOR

This matter arises as an appeal from the Election Officer's decision in Case No. P-882-LU63-CLA. A hearing was held before me by way of teleconference at which the following persons were heard: John J. Sullivan and Barbara Hillman for the Election Officer; Geraldine Leshin, a Regional Coordinator; Gerry Fellman, an Adjunct Regional Coordinator; Maurice Harrison for Vons Companies, Inc. ("Vons"); Gerald Moerler, the Complainant; and Susan Jennik for Mr. Moerler and the Committee To Elect Ron Carey. The Election Officer also provided a written Summary in accordance with Article XI, Section 1.a.(7) of the Rules For The IBT International Union Delegate And Officer Election (the "Election Rules").

Gerald Moerler is a member of IBT Local Union 63 who is employed by Vons at its facility in Boxwood, California. He has been an active campaigner on behalf of the Ron Carey slate of candidates for International Union officer positions. The issues

he raises on this appeal are part of an ongoing series of disputes over access to employee bulletin boards at Vons' locations in Santa Fe Springs and El Monte, California.

As a settlement of two prior protests by Mr. Moerler, Vons agreed to install locked, glass enclosed, bulletin boards at these locations. To limit access, Vons' supervisors were to maintain the only keys. However, the supervisors were to be available at all times until the conclusion of the election to post campaign materials submitted by employees. Vons further agreed not to use the boards for its own material and to insure that campaign literature would remain posted for thirty days without being replaced or obstructed during that period. See In Re Moerler, 91 - Elec. App. - 75 (SA) (February 19, 1991).

In the instant matter, Mr. Moerler charges that pro-Carey literature he had posted on the board at Santa Fe Springs in August 1991 was removed and replaced with material supporting the R.V. Durham slate after only eight days.¹ Mr. Moerler also alleges that, contrary to its agreement, Vons used the board to display its own material, namely, two plaques recognizing the good-driving records of two employees. In addition, Mr. Moerler asserts that Vons had improperly taken time to screen his campaign material thereby needlessly delaying the posting and chilling his rights of political expression.

¹ Like Carey, Durham is also running for the position of General President of the IBT.

Upon investigation, the Election Officer sustained Mr. Moerler's claims that the material was removed or replaced before the end of the thirty-day period, and that Vons had improperly used the board to display the two company good-driving plaques. Accordingly, the Election Officer granted this part of the protest finding a violation of Mr. Moerler's rights under the above-cited settlement agreement and under Article VIII, Section 10.c. of the Election Rules (guaranteeing, inter alia, that no restrictions shall be placed on pre-existing rights to use employee bulletin boards for campaign publicity).

To remedy this violation, the Election Officer directed Vons to distribute Mr. Moerler's campaign literature, on a one-time basis, by enclosing the material in the envelopes containing the weekly paychecks of IBT members employed at Santa Fe Springs.

The Election Officer also concluded that Vons had a right to screen material for obscene or offensive content prior to posting and that a reasonable delay in doing so did not chill political expression or otherwise violate the Election Rules. Thus, the Election Officer denied this portion of the protest.

Vons was notified of the Election Officer's decision by letter dated September 25, 1991. However, Vons did not appeal that decision until October 30, 1991. The Election Rules contemplate that such appeals must be filed within twenty-four hours. Election Rules, Article XI, Section 1.a.(5). At the hearing before me, Vons did not offer an explanation that would justify this untimely

filing. Moreover, it is suspect that Vons would neither comply with nor appeal the Election Officer's decision until the eve of the election when time constraints would make it difficult to provide a meaningful remedy. Nevertheless, I determined that in the interest of settling the issues clouding the access to the bulletin boards in question, I would consider the merits of Vons' appeal. This was especially so given that Vons was not contesting any of the facts regarding the posting of material at the Santa Fe facility, and was simply challenging its obligation to police the bulletin boards as a "matter of law."

At the hearing before me, I affirmed the Election Officer's decision from the "bench." At the request of the Election Officer, I also extended that decision to direct Vons to include, on a one-time basis, campaign material supplied by Mr. Moerler in the paychecks of Vons' employees at the El Monte facility. By virtue of my "bench" decision, Vons was ordered to accept campaign literature furnished by Mr. Moerler and enclose that material in the pay envelopes of employees at both the Santa Fe Springs and El Monte worksites in the November 7, 1991, distribution of paychecks.

While it is not my usual practice to issue "bench" decisions, the need for doing so under these circumstances is obvious and compelling. November 7th is the last payday before the balloting for the IBT International Officer election begins. Due to the delayed appeal, the hearing before me did not occur until November

5. Absent a decision from the "bench," the remedy could not be implemented.

The reasons for including the El Monte facility in the remedy are compelling. Mr. Moerler has lodged three separate protests with the Election Officer regarding instances of untimely removal of Ron Carey campaign literature from the employee bulletin board at that facility. While the Election Officer has not yet issued a decision in those matters, Vons, Mr. Moerler and the Election Officer all agreed at the hearing before me that the issues raised in those protests were the same as presented on this appeal, and thus those issues could be resolved as a "matter of law." In short, the facts regarding the untimely removal of literature at El Monte were not in dispute and the issues raised were the same as those raised in regards to the Santa Fe facility.

As noted above, Vons does not challenge the Election Officer's findings, but rather argues that its supervisors have no duty to maintain the postings on the bulletin boards, and that imposing such a duty would be time consuming and burdensome.

It is clear, however, that Vons does have an obligation to post material within a reasonable time after a request to do so is made and to insure that postings are not removed or replaced before the end of the thirty-day period. As the Election Officer observed in his Summary, the "right of control carries with it a corresponding duty of control." An untimely removal cannot occur without a Vons supervisor either giving the key to another employee

or removing the material himself. Moreover, Vons voluntarily assumed the duty of monitoring the postings on the bulletin boards when it accepted the settlement agreement that resolved the original disputes. In Re Moerler, 91 - Elec. App. - 75 at p. 3 ("Vons Company shall direct its supervisors and other employees not to remove or cover over campaign material unless it remained on the board for more than 30 days.").

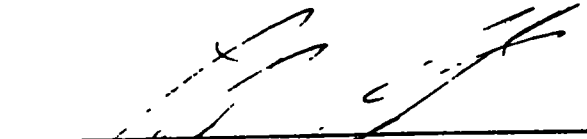
In accepting the Election Officer's conclusion in this matter, I note that the obligation imposed on Vons' supervisors here is a reasonable one that involves only a minimal amount of time and effort. As Mr. Moerler's experience indicates, and as the Election Officer's finding confirms, a supervisor who is occupied with other duties at the time a posting is desired, is free to set the material aside for review and posting at some reasonable time in the future. Once the posting is made, the bulletin board is locked and the supervisor remains the sole custodian of the key. Thus, there is no need to police the bulletin boards on a continuous² "twenty four hour" basis as Vons suggests. Thus, the responsibili-

² To the extent Vons suggests that its supervisors often lend the key to those who wish to post material so that they can do so personally, that suggestion is not supported by the facts. Mr. Moerler has never been allowed access to the bulletin board keys. Moreover, Vons itself has preserved their right to review campaign material before it is posted. This again defeats any suggestion that keys are distributed upon request so that prompt postings can be made by third parties. In any event, if Vons' supervisors have lent keys out on occasion, such a practice is inconsistent with the concept of a locked bulletin board and keeping the custody of the keys in the sole possession of the supervisors, and thus such practice should stop.

ties placed on the Vons' supervisors cannot be fairly described as something that is unduly onerous and burdensome.

The additional remedies sought by Mr. Moerler are denied as there has been no finding or admission of discriminatory conduct by Vons.

For the foregoing reasons, and as stated in my "bench" decision, the Election Officer's decision is affirmed and extended in the manner described above to include a November 7, 1991, mailing to the IBT members employed at the El Monte facility.



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

Dated: November 7, 1991

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 11, 1991

VIA UPS OVERNIGHT

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

Vons Grocery Company
4344 Shirley Ave.
El Monte, CA 91731

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

**Re: Election Office Case No. P-882-LU63-CLA
(Compliance, affirmed 91 Elec. App. 222)**

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules") by Gerald Moerler, a member of IBT Local Union 63. Mr. Moerler is a supporter of the Ron Carey Slate of candidates for International Officer. The protest concerned the removal of Carey literature from the locked bulletin boards at Vons' Santa Fe Springs facility.

By decision dated September 25, 1991, the Election Officer granted the protest and determined that Vons should distribute campaign literature on behalf of Mr. Moerler to all the IBT member employed by it at the Santa Fe Springs facility. The decision directed that Mr. Moerler was to prepare and duplicate the material and then to provide it to Vons. Vons was then to distribute the material in the paychecks of its employees at the Santa Fe Springs facility.

In accordance with that decision, Mr. Moerler claims that he had printed 400 copies of a campaign leaflet he wished Vons to distribute on his behalf. Mr. Moerler claims that he delivered the material to Sharon Smith, a supervisory employee at Vons on October 23, 1991. Vons subsequently claimed that it did not receive the material. The Election Officer investigation, conducted by Regional Coordinator Geraldine Leshin and the Washington, D.C. staff of the Election Officer, confirmed that the delivery occurred as claimed by Mr. Moerler.

A copy of Mr. Moerler's letter of transmittal, indicating the number of fliers being delivered and enclosing a copy of the Election Officer's decision in Election Office Case No. P-882-LU63-CLA, was stamped and initialed by Ms. Smith. In addition, Ms. Smith admitted having received a package from Mr. Moerler which she deposited on the

Gerald Moerler
November 11, 1991
Page 2

desk of the secretary to the Transportation Department. Ms. Smith also admits that she stamped and initialed a copy of Mr. Moerler's transmittal letter. Upon being informed that Vons stated it did not have, or no longer had, the leaflets; Mr. Moerler had them reprinted. Instead of reprinting 400 leaflets--the number originally delivered by him on October 23, 1991--Mr. Moerler had 800 copies printed. The additional 400 were for a similar distribution to be made at Vons for the IBT members employed at its El Monte facility in accordance with the direction of the Independent Administrator in his bench decision of November 5, 1991 affirming Election Office Case No. P-882-LU63-CLA.

Mr. Moerler now claims that Vons should reimburse him for the additional expenses he incurred by having to have the leaflets for distribution to the Santa Fe Springs employees printed twice. The Election Officer's investigation determined that Mr. Moerler had in fact delivered the material to the Santa Fe Springs facility on October 23, 1991 and had given it at that time to a supervisory employee of Vons. A supervisor is considered the agent of an employer and delivery to a supervisor by Mr. Moerler constitutes a delivery to Vons. The subsequent loss or disposal of the leaflets properly delivered on October 23, 1991 is the responsibility of Vons. Accordingly, the Election Officer determines that Vons is required to reimburse Mr. Moerler for the extra cost he incurred by having to have the leaflets printed twice.

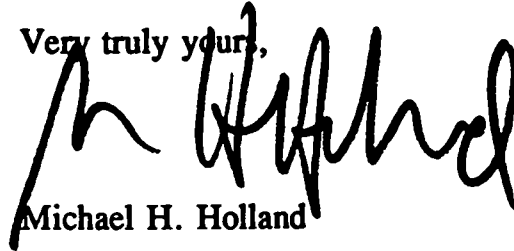
The Election Officer's investigation determined that Mr. Moerler paid \$103.76 for the reprinting. However, the number of leaflets reprinted was 800--twice the amount of leaflets than had been delivered by Mr. Moerler on October 23, 1991 to Vons. Accordingly, Vons is responsible for only one half of the \$103.76 bill incurred by Mr. Moerler, or \$51.88. Within seven (7) days of the date of this decision, Vons shall reimburse Mr. Moerler by tendering the amount of \$51.88. Within three (3) days thereafter Vons shall submit an affidavit to the Election Officer demonstrating its compliance with this decision.

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,

Gerald Moerler
November 11, 1991
Page 3

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/ca

cc: Frederick B. Lacey, Independent Administrator

Geraldine L. Leshin, Regional Coordinator

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

The Vons Companies, Inc.
Attention: Ted Harrison, Legal Department
618 Michillinda Avenue
Arcadia, CA 91007-1734

IN RE:

GERALD MOERLER

and

VONS COMPANIES, INC.


and

IBT LOCAL UNION NO. 63

91 - Elec. App. - 222 (SA)

SUPPLEMENTAL DECISION OF THE
INDEPENDENT ADMINISTRATOR

The purpose of this Supplemental Decision is to clarify the remedial order in the above captioned matter. In my unwritten "bench" decision of November 5, I affirmed the Election Officer's decision in this matter in all respects. The remedy ordered directed Vons to accept campaign literature from Mr. Moerler and to distribute this material to its Santa Fe Springs and El Monte employees by including one 8½ x 11 sheet of literature in each of their pay envelopes along with their paychecks on November 7, 1991. However, my written decision of November 8, 1991 uses the word "mailing" in the final paragraph when referring to the remedy. The use of the word "mailing" in my written decision contemplates only a distribution of campaign materials in the pay envelopes as provided for in the remedy.



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

Dated: November 12, 1991