

OFFICE OF THE ELECTION OFFICER
c/o INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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Election Officer

June 17, 1991

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VIA FACSIMILE AND UPS OVERNIGHT MAIL

Mr. Gerald Moerler
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Good of All Slate
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Robert Marciel, Secretary-Treasurer
IBT Local 63
1616 West Ninth Street - Room 205
Los Angeles, California 90015

Re: Election Office Case No. Post 73-LU63-CLA

Gentlemen:

A post-election protest was filed pursuant to Article XI, Section 1 of the *Rules for the IBT International Union Officer and Delegate Elections*, revised August 1, 1990, ("Rules") by Gerald Moerler, a candidate for Delegate to the IBT International Convention from Local Union 63, located in Los Angeles, California, on the Delegates for Carey Slate ("Carey Slate"). The post-election protest, as amended, alleges the following violations of the Rules.

1. Members of the opposing slate, the Informed Teamsters for the Good of All Slate ("Informed Teamsters Slate") and their supporters violated the *Election Rules* by soliciting and collecting ballots;

2. A member of the Informed Teamsters Slate threatened a member of the Carey Slate,

3. Local 63 did not provide the Carey Slate a complete and accurate work site list;

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4 While posting the notices required by the Election Officer's decision in Election Office Case No. P-768-LU63-CLA, Informed Slate members or their supporters removed or obliterated campaign literature of the Carey Slate; and

5. Local 63 failed to inform the Carey Slate that a membership list with telephone numbers was available for purchase from the Local Union at the time it permitted the Informed Teamsters Slate to obtain the list

Mr Moerler further asserts that the Informed Teamsters Slate and their supporters have consistently and flagrantly violated the *Election Rules* as well as the protest decisions and remedial orders of the Election Officer. Mr. Moerler asserts that the pattern of violations and continued disregard of the decisions and orders of the Election Officer require that the members of the Informed Teamsters Slate be disqualified.

This post-election protest concerns a rerun election for Delegates and Alternate Delegates to the 1991 IBT International Convention from Local Union 63. The initial election was held on March 26, 1991. There were 34 candidates running for 17 Delegate positions and 6 candidates running for 4 Alternate Delegate positions. Each candidate was affiliated with one of the two slates, the Informed Teamsters for the Good of All Slate ("Informed Teamsters Slate") or the Delegates for Carey Slate ("Carey Slate"). ^{1/} Protests were filed concerning the election and its outcome. After investigation, the Election Officer ordered a rerun election. See Election Office Case Nos. Post 61-LU63-CLA and P-683-LU63-CLA. The Election Officer's decision was based on the ballot format; the slates were not positioned in accordance with the results of lot

^{1/} The Informed Teamster Slate had a candidate for all Delegate and Alternate Delegate positions while the Carey Slate had only two candidates in the Alternate Delegate race.

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drawing held for ballot placement The decision of the Election Officer was affirmed by the Independent Administrator. 91 Elec App. 137

Pursuant to the determination of the Election Officer, ballots for the rerun election were mailed on or about May 13, 1991. The ballots were counted on May 31, 1991. The tally of ballots for both elections is as follows:

<u>INFORMED TEAMSTERS FOR THE GOOD OF ALL SLATE</u>			<u>DELEGATES FOR CAREY SLATE</u>		
<u>Name</u>	<u>March</u>	<u>May</u>	<u>Name</u>	<u>March</u>	<u>May</u>
<u>Delegate Candidates</u>					
Moreno	1287	1957	Meyers	1356	1690
Wilson	1303	1950	Salinas	1324	1690
Arzate	1263	1946	May	1333	1669
Morua	1254	1937	Askey	1320	1664
Hayes	1262	1930	Ellerman	1332	1658
Halterman	1264	1926	Lord	1311	1645
Hood	1275	1924	Mangrum	1280	1641
Douglass	1260	1918	Moerler	1288	1640
Hanlon	1222	1914	Coleman	1310	1636
Smith	1226	1910	Fenn	1303	1633
Thompson	1236	1906	Lollis	1267	1633
Taylor	1246	1895	Hover	1283	1629
Purrington	1207	1887	Cetinske	1273	1621
Freitag	1217	1878	Paffenroth	1300	1620
Magurn	1202	1875	Dolton	1274	1619
Stuver	1240	1873	Buettner	1267	1617
Beaudette	1215	1868	Bonesteel	1274	1609
<u>Alternate Delegate Candidates</u>					
Day	1338	2011	Manning	1349	1695
Nickum	1264	1966	Kniss	1312	1672
Doss	1290	1956			
DeGroot	1272	1922			

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Thus, in the rerun the margin between the 17th ranked Delegate candidate (Beaudette, the lowest winner) and the 18th ranked candidate (Meyers, the highest loser) was 178 votes. The margin between the fourth ranked Alternate Delegate candidate (DeGroot, the lowest winner) and the fifth ranked Alternate Delegate candidate (Manning, the highest loser) was 227 votes.

All successful Delegate and Alternate Delegate candidates in the rerun were members of the Informed Teamsters Slate. This result differs significantly from the first election where fourteen successful Delegate candidates were affiliated with the Carey Slate and three successful Delegate candidates were affiliated with the Informed Teamsters Slate.

The Election Officer has conducted an extensive investigation of the post-election protest. Some of the allegations of the post-election protest were the subject of prior determinations by the Election Officer, all of which will be detailed below. Based upon the investigation the Election Officer makes the following determinations as to alleged violations of the Rules.

I. Background.

Local 63 is one of the largest locals in the IBT. It has averaged almost 13,000 members over the past twenty-four months. Local 63 employs 19 business agents in addition to the Local's officers, some of whom also serve as business agents. The membership of Local 63 is widely dispersed. Members work and live throughout Southern California and portions of the Central Valley, the membership worksites and residences are located in Los Angeles, Orange, Riverside, San Bernadino, San Diego, Fresno, and Kern counties. Two hundred fourteen (214) separate companies encompassing 339 worksites, employ Local 63 members. Many of the bargaining units are quite small.

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The job duties of Local 63 members vary widely, from truck drivers to manufacturing to crafts. Many members are of Hispanic descent. A large number are Spanish-speaking, with extremely limited or no English. Many of the smaller bargaining units consist almost, if not exclusively, of members who are unable to communicate in English.

None of the officers or members of Local 63's executive board sought election as delegates or alternate delegates. However, Local 63's officers, executive board members and business agents were an integral part of the Informed Teamsters Slate and its campaign. The Informed Teamsters Slate was created by Local 63's officers and executive board. "[T]he Executive Board decided not to run Local 63's top leadership but to field a slate of candidates made up of stewards and members . . ." as stated in a personal letter sent to all Local 63 members from Bob Marciel, Secretary-Treasurer of Local 63, and Bob Aquino, President of Local 63.

The Informed Teamsters Slate not only was created by Local 63's officers but its campaign activities were also controlled by the same group. The finances for the Informed Teamsters Slate were handled by Local 63's Vice-President. Candidate Ray Nickum, the designated slate representative, knew nothing of the Slate's financial arrangements. 2/ Although each candidate on the Informed Teamsters Slate was required to make a campaign contribution, the campaign was also financed by the campaign fund maintained by Local 63 Secretary-Treasurer Marciel and other Local 63 officers.

2/ Similarly, Mr Nickum, who signed several protests on behalf of the Informed Teamsters Slate, habitually referred the Election Office investigator to a Local 63 officer or business agent for the facts to support his protest.

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The platform and campaign strategy for the Informed Teamsters Slate was developed at a meeting held at the home of Secretary-Treasurer Marciel and chaired by Randy Cammack, Local 63's Vice-President, even though neither of them was a candidate. The literature for the Informed Teamsters Slate was prepared by the same consultant used by Local 63 to prepare its Local Union newspaper; the same consultant was also employed by Secretary-Treasurer Marciel in his Local Union officer election campaign. Much of the Slate's literature omitted the names of Slate members and instead contained the names of Local 63's officers, executive board members, business agents and stewards

Robert D Vogel, the attorney for Local 63, has provided extensive legal representation to the Informed Teamsters Slate during the investigation and appeal hearings of numerous protests, no other attorney was involved. Mr. Vogel represented all deponents -- whether slate members, Local 63 officers or business agents -- during the depositions taken by the Election Officer in Case Nos P-714-LU63-CLA and P-768-LU63-CLA.
3/

The Carey Slate is committed to accredited General President Candidate Ron Carey. No Local 63 officer, executive board member or business agent supported the Carey Slate. Only one Local 63 steward participated as a member of the Carey Slate. 4/

3/ The Election Officer is presently investigating a protest alleging that Local 63 is using its funds to subsidize the Informed Teamsters Slate by paying for Attorney Vogel's legal services (Election Officer Case No P-747-LU63-CLA). The Independent Administrator has already ruled that Mr. Vogel has been representing the interests of the Informed Teamsters Slate (91 Elec App 153).

4/ The Carey Slate did receive campaign contributions from supporters who were not members of Local 63.
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II. BALLOT SOLICITATION, COLLECTING, AND SECRECY.

On May 17, 1991, shortly after the ballots for the rerun election were mailed, Gerald Moerler filed a protest alleging that officers and business agents of Local 63 were soliciting, collecting, and assisting members in marking official ballots. The Election Officer immediately conducted an investigation of the protest and, on May 20, 1991, issued a decision finding that two business agents of Local 63, Martin Perez and Hector Velez, the former being also the Recording Secretary of the Local, had solicited ballots. The Election Officer found that at least nine members were affected by the solicitation and had actually given their ballots to Business Agent Perez or to another member designated by him. Election Office Case No. P-768-LU63-CLA, affirmed 91 Elec App. 153.

The Election Officer ordered immediate relief in an effort to diminish the impact of these violations during the course of the then ongoing rerun election. 5/ Local 63 was required to post a notice on all Local 63 bulletin boards by the close of business on May 21, 1991. Local 63 was further required to transmit to each of its officers, business agents, and stewards a copy of a memorandum before the close of business on May 21, 1991. The notice advised all members of Local 63 that they had the right to cast their ballot in secrecy and that they should not give

4/ (...continued)

The Carey Slate has received legal assistance from attorneys associated with Teamsters for a Democratic Union

5/ The prophylactic purpose of the Election Officer's decision was emphasized by his statements that his investigation remained ongoing and that he would consider the effect, if any, of the violation on the results of the election after the election was concluded.

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their ballot to anyone. The memorandum advised all officers, business agents, and stewards that it was a violation of the *Election Rules* to require or to request any member to turn over the member's ballot. The memorandum also required any officer, business agent, or steward who had received ballots to immediately contact the Election Office Regional Coordinator Geraldine Leshin.

The May 20, 1991, decision stated that the investigation into ballot collecting and solicitation would continue and that any candidate or member of the Carey Slate would be entitled to seek post-election relief based on the allegations of the protests. The Election Officer has continued the investigation of this protest and the Carey Slate has sought post-election relief. 6/

Further, prior to the count, the Election Officer received information that Local 63 was not complying with the remedy ordered in Election Office Case No. P-768-LU63-CLA, specifically, that the notice concerning ballot secrecy and the solicitation and marking of ballots was not posted at all worksites and that stewards had not received or been advised of the memorandum or its contents. These assertions were also

6/ During the ongoing investigation of this protest, the Election Officer was advised of other work locations where ballots had allegedly been solicited and/or collected. The Election Officer ordered that ballots received from any of these work locations should be challenged at the count. Since the number of challenges made on this basis exceeded the margin between the successful and unsuccessful candidates, all challenged ballots were counted on a segregated basis. Thus, the tally of votes includes ballots received from members employed at the worksites where ballots allegedly were collected.

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investigated as part of the investigation of the post election protest.

The investigation was conducted by Regional Coordinators Geraldine Leshin and Bruce Boyens, along with Adjunct Coordinators Raymond Cordova and Ralph Eliaser. They were assisted by Spanish-speaking translators where necessary. On-site visits were made to approximately 27 worksites and the investigators were able to speak with individual members at approximately 14 worksites 7/ Of the worksites visited, members located at 10 locations reported to investigators that ballots had been solicited, collected and/or marked by other members, business agents and/or stewards 8/

The investigation conducted by the Election Officer was constrained by the short time remaining before the commencement of the IBT International Convention. Further, the Election Officer investigators encountered increasingly greater resistance in their investigation as time passed. Members and stewards became more and more reluctant to speak to them.

The circumstantial evidence points to a conclusion that Local 63 and its business agents were directly

7/ Many members refused to speak to the Election Officer representatives, their reluctance can be attributed to, among other things, the pervasiveness of the campaign activity of Local 63 business agents, as well as the characteristics of many members, i.e., Spanish-speaking transient workers many of whose immigration status was unclear.

8/ Virtually all of the members to whom Election Officer representatives spoke were extremely fearful of retaliation and reprisals from Local 63 for cooperating with the Election Officer.

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interfering with the investigation process. For example, when Election Officer investigators arrived unannounced, evidence of ballot collecting and marking was uncovered. As time passed or on those occasions when the employer gave advance notice to Local 63, members were more likely to refuse to talk or to deny having any direct information. 9/

A summary of the results of the investigation, catalogued by employer, is as follows:

John DeGroot

The investigation revealed that Business Agent Carl Norman asked one member to collect ballots from members employed at this worksite. The member complied by collecting 23 ballots and then called Local 63 for instructions on what to do with the ballots. Business Agent Hector Velez told him how to vote the ballots. He followed the instructions, voting for the Informed Teamsters Slate on each ballot he collected, and then mailed the ballots. 10/

Foster Farms

In his investigation, the Election Officer found that Business Agent Martin Perez asked a member to collect ballots from other members employed at this worksite. The member, to whom the request was made, agreed and collected approximately 10-12 unmarked ballots, including his own, which he gave to Perez.

Two other members stated that Bob Hodges, a member of Local 63 employed at Foster, collected their ballots, one was a blank ballot, and Hodges assisted in

9/ No witness, however, denied that he/she had heard that blank ballots were being collected and marked by Local 63's business agents

10/ All ballots received from John DeGroot were voted for the Informed Teamsters Slate.

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unmarked ballot to Hodges stated that Hodges marked the left side of his ballot, i.e., voted for the Informed Teamsters Slate.

Another member stated that Hodges asked for his ballot and that Hodges told him that Business Agent Martin Perez had instructed him to make this request. This member stated that he marked and mailed his own ballot.

Friedman Bag

Three members stated that members Salvna Acosta and Juan Calderon (also a steward) were collecting unmarked ballots. All three members stated that Business Agent and Recording Secretary Hector Velez and another business agent identified as "Colorado" ^{11/} marked the ballots collected. One of these members also saw Robert Marciel, Secretary-Treasurer of Local 63, collect unmarked ballots from members and mark or vote the ballots. Campaign literature lists Mr. Calderon as one of the stewards supporting the Informed Teamsters Slate.

North American Produce

A member stated that he gave his blank, unmarked ballot to Assistant Shop Steward Lucia Medina, an Informed Teamster Slate supporter, on May 20, 1991, and she marked or voted it. Lucy Morua, a candidate for Delegate on the Informed Teamsters Slate, stated that she accepted two ballots for mailing, she stated that the two ballots had been marked and sealed before delivery

^{11/} In Spanish, the word "Colorado" signifies the color red. One of Local 63's Business Agents is named Red Rascon.

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Zacky Farms

One member stated that he gave his unmarked ballot to Business Agent Martin Perez as requested. He also stated that Mr. Perez asked other members to give him their ballots.

Hostess Cake

One member stated that he gave his ballot to an unidentified individual.

Oroweat

Several members stated that ballots were solicited and submitted to unnamed individuals.

Trojan Meats

Three members stated that their ballots were solicited by unnamed individuals.

Dolly Madison

Two members confirmed that solicitation of ballots took place.

Hoffman Brothers

In his decision in Election Office Case No. P-768-LU63-CLA, the Election Officer found that at least nine ballots of the twenty-nine members employed at Hoffman had been collected at the direction of Local 63 business agents Hector Velez and Martin Perez. This finding has never been disputed.

As part of his decision in Election Office Case No. P-768-LU63-CLA, the Election Officer ordered the depositions of business agents Martin Perez and Hector Velez. In their depositions, both denied having solicited or marked ballots. Mr. Perez admitted that he accepted two or three sealed ballots of members employed at Hoffman Brothers for mailing.

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* * * * *

Based on the results of the investigation, as detailed above, the Election Officer does not credit the statements of Martin Perez and Hector Velez. Many specific statements of Local 63 members, several of whom expressed fear of retaliation, clearly identified Mr. Perez and Mr. Velez, among others, as being involved in the ballot collecting scheme. Even Local 63 stewards confirmed their involvement. These stewards and members, none of whom was identified with the Carey Slate, had no reason to fabricate; the same cannot be said for Mr Perez or Mr Velez. Further, direct testimonial evidence was adduced regarding their efforts to sabotage the Election Officer's investigation, that is, to have members and stewards lie (see discussion infra at 14). The Election Officer has more than ample basis for discrediting their testimony.

The Election Officer finds that ballots were collected and marked at worksites on a broad basis throughout the Local. Admittedly, the Election Officer's investigation did not include all Local 63 members. Neither did the investigators visit all 339 worksites. However, among the sites visited, ballot collecting was confirmed among employees of nearly half of those employers; the percentage increases if one excludes the later visits when advance notice was given to Local 63. While the exact number of members affected cannot be quantified precisely, the Election Officer finds that ballot collecting and marking was pervasive, particularly among those segments of the membership most vulnerable to coercive tactics, i.e , unskilled, lower wage Spanish-speaking immigrants.

Further, the investigation revealed that Local 63 did not comply with the Election Officer's directive in Election Office Case No P-768-LU63-CLA to post a notice in all worksites and to distribute a memorandum

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to all Local 63 business agents. 12/ Of the 27 locations visited by the representatives of the Election Officer after the date of the decision, 14 did not have the notice regarding ballot collecting posted on the Local bulletin board as directed. 13/ John DeGroot was among these 14. The postmarks on the ballots received from members employed by DeGroot show that all were mailed after May 21, 1991, after the notice should have been posted and the memorandum should have been distributed to officers, business agents and stewards telling them that the soliciting in which they were engaging was illegal.

Robert Paffenroth, a Steward at Roadway (Barstow) was not advised of the Election Officer's memorandum and the notice was not posted at his worksite until after he contacted the Regional Coordinator's office. The notice was finally posted on May 30, 1991, the day before the ballots were counted.

Two other stewards stated they had not received the memorandum or notice from Local 63. One of them stated that he was directed by Business Agent Martin Perez to call Regional Coordinator Geraldine Leshin to falsely advise her that the notice had been posted.

An employer representative at Farmer John (Clougherty) stated that all postings for the bulletin board were sent to the employer; none had been received from Local 63 for at least three weeks.

12/ The investigation has clearly proven that Mr. Marciel's written statements and affidavit to the Election Officer that Local 63 fully complied with the remedial provisions of Election Office Case No. P-768-LU63-CLA were false

13/ The investigation failed to uncover any evidence to support the allegation that Carey literature was being removed or covered. Thus, that aspect of the post-election protest is hereby DENIED.

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II WORKSITE LISTS

Gerald Moerler contends that he discovered for the first time at the May 31, 1991, election count that Local 63 had omitted 24 employers from the worksite list provided him pursuant to Article VIII, Section 1 of the Rules. The Election Officer has reviewed the list of 24 names allegedly omitted from the two worksite lists which were provided by Local 63. 19 of the 24 companies are in fact listed, although in some instances the names were slightly changed, e g , Harvey Sawyer Meat is listed as Harvey Sawyer. Five companies were not on either worksite list. One of the five had no members. Another had five members all of whom were ineligible to vote. Two others had a total of four members who were eligible to vote. The remaining employer, Center of the Plate, had 36 eligible voters, only one of whom voted; this is a significant omission.

The failure of Local 63 to list five employers on a worksite list would not necessarily, in and of itself, constitute a violation of the Rules. ^{14/} However, this protest is not the first time the Carey Slate has complained about Local 63's failure to comply with the requirements of Article VIII, Section 1 of the Rules. On November 11, 1990, five months earlier, the members of the Carey Slate first requested access to the collective bargaining agreements or a copy of the worksite list. Local 63 delayed providing a worksite list for two months, until January 5, 1991, and then provided it only after intervention by the Election Officer. See Election Office Case Nos. P-123-LU63-CLA

^{14/} The five employers omitted by Local Union 63 were all companies which do not normally appear on the employer work sheet used by the Local Union in the conduct of its regular business because these employers did not check-off or remit dues for the Local Union 63 members they employed. The work sheet normally contains only the names of employers billed by the Local for dues remittance purposes.

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and P-127-LU63-CLA. Further, even after the delay and the finding of a violation by the Election Officer, Local 63 did not fully meet its obligations under the *Election Rules* with respect to worksite lists. See Election Office Case No. P-564-LU63-CLA, affirmed 91 Elec.App. 102 (March 19, 1991).

In view of this extensive history, the Election Officer finds that Local 63 violated the *Rules* by failing to provide a complete worksite list to the members of the Carey Slate and failed to comply with the decisions of the Election Officer remedying the previous protests filed regarding this issue

III MEMBERSHIP LIST

Gerald Moerler filed a pre-election protest alleging that Local 63 provided a complete membership list with phone numbers to the Informed Teamsters Slate on May 3, 1991, for the sum of \$75.00, and that the Carey Slate had no similar opportunity. Election Office Case No. P-775-LU63-CLA, affirmed 91 Elec.App. 160. The Election Officer found a violation of Article VIII, Section 2(a) and Section 10(c) of the *Rules*. The decision notes that the Informed Teamsters Slate and its supporters used the phone numbers for contacting members for campaign purposes. The Carey Slate was denied the opportunity to conduct a similar phone bank.

The Election Officer did not determine whether the violation affected the outcome of the rerun election, delaying this analysis to a post-election protest. Mr Moerler has again raised this issue in his post-election protest. The Election Officer does not alter his original conclusion that the *Rules* were violated and the Carey Slate adversely affected

IV THREATS

Mr Moerler's post-election protest alleges that a supporter of the Informed Teamsters Slate has threatened candidates on the Carey Slate. Moerler also alleges that he was physically threatened by a

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supporter of the Informed Teamsters Slate in connection with the investigation of this post-election protest. Allegations of threats to members or candidates, particularly in connection with protests, is of great concern to the Election Officer. However, threats occurring after the election could not possibly have affected the outcome of the election. However, because these allegations are serious, the Election Officer will continue his investigation, including, if appropriate, referring the matters to the Investigations Officer for his participation.

V. REPEATED VIOLATIONS OF THE RULES

The final aspect of Mr Moerler's post-election protest alleges that the Informed Teamsters Slate and its supporters, which include Local 63's officers and representatives, have repeatedly violated the *Rules* and have failed to comply with the remedial orders of the Election Officer. As noted above, three protests were filed against Local 63 regarding its failure to comply with the collective bargaining agreement or worksite lists access provisions of Article VIII, Section 1 of the *Rules*; the Election Officer found violations in all three cases. To date, the worksite list remains incomplete. Local 63 again violated the *Rules* and discriminatorily denied campaign access when it provided a membership list with phone numbers to the Informed Teamsters Slate without notifying the Carey Slate of the availability of such a list.

Numerous protests were filed against Local 63 and the Informed Teamsters Slate by the Carey Slate regarding bulletin board access at employer sites. The protests alleged the denial of appropriate access as required by Article VIII, Section 10(d) of the *Rules* as well as allegations that Local 63's business agents and/or stewards were covering or removing literature posted in support of the Carey Slate or its supported candidate Ron Carey. The Election Officer sustained

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these protests. See Election Office Case Nos. P-055-LU63-CLA, affirmed 90 Elec.App. 21, P-288-LU63-CLA, P-211-LU63-CLA, P-414-LU63-CLA, affirmed 91 Elec.App. 75, and P-690-LU63-CLA. Despite this multitude of decisions, total compliance has not yet been achieved. On June 3 and 10, new protests were filed alleging that Local 63 stewards continued to remove campaign literature from general purpose bulletin boards at Roadway Express despite the three prior decisions prohibiting such removal and specifically implementing regulations to prevent such interference with protected campaign activities. See Election Office Case No. P-055-LU63-CLA, affirmed 90 Elec.App. 21, as well Election Office Case Nos P-288-LU63-CLA and P-690-LU63-CLA

On April 19, 1991, the Election Officer issued a decision in Election Office Case No. P-713-LU63-CLA requiring Local 63 to inform all its members that guns and other weapons were not permitted at Local Union meetings. The decision was affirmed by the Independent Administrator 91 Elec.App. 140. The Local failed to comply with the mandate of that decision until after the ballots for the rerun election had been mailed on May 13, 1991, three weeks later. See Election Office Case No. P-713-LU63-CLA (compliance) affirmed 91 Elec.App. 157. During the intervening period, the Local Union held several meetings. These delaying tactics effectively nullified the Election Officer's remedy which was designed to prevent intimidation and violence during the critical pre-election period.

The most egregious area of noncompliance concerns the protest alleging collecting and marking of ballots discussed above (Election Office Case No. P-768-LU63-CLA, affirmed by bench decision and subsequent written opinion, 91 Elec App 153). The Election Officer's decision was issued immediately in order to prevent more ballot collecting or marking in the critical two week period prior to the ballot count. The protest was filed on May 17, 1991, four days after the ballots were mailed. The Election Officer's decision was issued on May 20, 1991, twelve days prior to the scheduled ballot

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count. Proper compliance required Local 63 to see that notices were posted at all worksites during this critical period and to advise all Local 63 officers, business agents and stewards that it was a clear and serious violation of the *Election Rules* for ballots to be solicited, collected, or marked. However, as documented above, the Election Officer's investigation reveals that compliance by Local 63 was spotty at best and frequently nonexistent.

The intended prophylactic effect of the Election Officer's decision was totally eviscerated. Ballot collecting and marking continued. Many members whose ballots were collected worked at sites where no notice was posted and where the business agents and stewards were neither informed of the Election Officer's decision nor given copies of the letter the Election Officer directed be sent. By failing to comply with the Election Officer's directives, Local 63 effectively encouraged the continued violation of the *Election Rules* and became an active participant in the pervasive practice of soliciting and marking ballots.

VI. Analysis

In the instant case there is no dispute that Local 63's officers, business agents and shop stewards are responsible for the serious and pervasive violations of the *Election Rules* catalogued above. For the reasons outlined above, Local 63 through its officers and business agents is inextricably intertwined with the Informed Teamsters Slate; Local 63's officers and employees have supplied the financial support through "voluntary" contributions and through contributions from other campaign funds, legal support and, most importantly, critical campaign support from a large group of business agents -- a de facto campaign organization -- all of whom were actively campaigning for the Informed Teamsters Slate. Local 63's leadership created, appointed the candidates, and ran the Informed Teamsters Slate. The Election Officer concludes that the Informed Teamsters Slate was, simply,

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a thinly-disguised arm of Local 63's officers from the outset.

Each of the violations of the *Election Rules* involving Local 63's officers and employees have directly and adversely affected the Carey slate and have benefitted the Informed Teamsters slate. Local 63 effectively extinguished the Carey Slate's access to segments of Local 63's membership with whom the Informed Teamsters Slate and its allies (the business agents of Local 63) came into contact on a regular basis. Local 63 provided enhanced campaign access for the Informed Teamsters Slate by supplying it with the members' phone numbers while conveniently neglecting to advise the Carey Slate of its right to obtain the means for telephone access. Bulletin board access for the Carey Slate has remained problematic despite numerous protests; no protests concerning the defacement or removal of Informed Teamsters Slate literature were found meritorious by the Election Officer. Local 63's delay in implementing the Election Officer's remedy with respect to the carrying and display of firearms at Local Union meetings may well have perpetuated an atmosphere of fear and intimidation.

All that said, however, the most egregious violations of the *Election Rules* was the solicitation, collection, and marking of ballots by agents of Local 63. As described in detail above, the practice of soliciting and collecting ballots, and marking those that were not already marked, was widespread and continued unabated even after the Election Officer's decision, and the Independent Administrator's affirmance, of a protest challenging the practice. Given the nature and extent of the ballot collection, the Election Officer concludes that this practice was part of a comprehensive scheme to subvert the rerun election. No election can be fair where the voter's right to participate is subverted by someone else voting for him or her.

The Informed Teamsters Slate was the clear beneficiary of this unlawful conduct. The Informed

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Mr. Gerald Moerler
Mr. Ray Nickum
Robert Marciel, Secretary-Treasurer
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Teamsters campaign organization, through its operatives at Local 63, was the vehicle for the solicitation and the collection of ballots.

Article XI, Section 1(b) of the *Rules* provides that post-election protests shall only be considered and remedied if the alleged violation may have affected the outcome of the election. To that end, the Election Officer determines whether the violations were sufficient in scope to affect the outcome of the election and/or whether there was a causal connection between the violation and the results or outcome of the election Dole v Mail Handlers Local 317, 132 LRRM 2299 (M D. Ala. 1989).

The Election Officer already determined in Election Office Case No. P-768-LU63-CLA that the *Rules* regarding ballot collecting have been violated. The Election Officer then ordered immediate remedies to prevent the continuation of these violations in the hopes of salvaging the then ongoing election. The investigation has shown that violations of Article XII, Section 3(d) of the *Rules* continued throughout Local 63 and that the Local did not take the necessary steps to effect compliance with the Election Officer's May 20, 1991, order. It is clear that the members of Local 63 were not afforded a fair and honest rerun election.

Section 401(b) of the LMRDA requires that labor organizations holding elections take every reasonable precaution to ensure that members are given the opportunity to cast their ballot in secret. Marshall v Steelworkers Local 12447, 591 F.2d 199 (3rd Cir. 1978). Regardless of the numbers involved, courts have held that the chilling effect on voters from a non-secret ballot is substantial. Kelly v IATSE Local B-183, 566 F Supp. 1199 (S.D.N.Y 1983). In this case not only did the incumbent officers and business agents undermine ballot secrecy, they took away members' right to vote. The members did not vote, the Informed Teamsters Slate by their agents, i.e., the Local's officers and business agents, cast the ballots. The fact that ballot solicitation and collection occurred

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IBT Local 63

in many locations throughout the Local, when coupled with the failure of the Local to comply with the remedial orders of the Election Officer concerning ballot collecting compels the Election Officer to conclude that these violations -- when taken in connection with the worksite list and phone number violations and in view of the arrogant disregard of the decisions of the Election Officer -- affected the outcome of the election

Normally such a finding would result in a new election being ordered. Since this rerun election was conducted only three weeks prior to the IBT Convention, it is now impossible for the Election Officer to order a new election in this Local. Here, it is impossible for the Election Officer to conduct a third rerun election of delegates and alternate delegates to the Convention in the few days remaining before the IBT Convention begins on June 24, 1991. Thus, the normal remedy for these violations -- another election -- is foreclosed.

Another directive available to the Election Officer under the *Election Rules* to remedy conduct "which may prevent or has prevented a fair, honest and open election" is to disqualify any member from seeking the position of delegate or alternate delegate (*Rules, Article XI, Section 2*). The Election Officer concludes that the extraordinary remedy of disqualification, never heretofore utilized with respect to *Rules* violations, is appropriate in this case. ^{15/} Actions of incumbent Local 63 officers who controlled the Informed Teamsters Slate and which benefitted that slate pervasively infected the rerun election. The vote results

^{15/} Most precedents interpreting analogous LMRDA provisions call for rerun elections because, in local union elections, there is always time for a rerun, there is no supervening event such as the IBT Convention here which controls the timing. Similarly, the NLRB can always conduct another Union representation election.

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were foreseeable the Carey Slate, having won most of the positions in the first election, was defeated in the second. The violations were not only pervasive and egregious, but the officers of Local 63 have disregarded specific directives of the Election Officer with an intent to frustrate the Election Officer's mandate to insure fair and honest elections. For the Election Officer to certify the results of the rerun election and to seat the Informed Teamsters Slate as delegates, when they and their Union-staff supporters have sabotaged the election, would be to reward the wrongdoers. Disqualification is the only conceivable remedy in this unique situation.

Moreover, the members of Local 63 should not be disenfranchised. In view of the closeness of the election results, the variations between the outcome of both elections, the fact that the Carey Slate's campaign was thwarted, as well as the seriousness of the violations, the Election Officer refuses to certify the results of the May 31, 1991 election, disqualifies the members of the Informed Teamsters Slate, and, instead, will certify all candidates not so disqualified, that is, members of the Carey Slate. 16/

Accordingly, the Election Officer will grant this post-election protest, disqualify all members of the Informed Teamsters Slate, and certify the members of

16/ Cousins v Wigoda, 419 U. S. 477 (1975), is an analogous precedent. There, the candidates who were elected as Illinois delegates to the 1972 Democratic National Convention were disqualified because they had been chosen in violation of the National Democratic Party's delegate election rules. Instead, members of the opposing slate, headed by William Cousins, were seated at the Convention by order of a Hearing Officer of the Credentials Committee. The Supreme Court unanimously reversed an injunction ousting the Cousins delegates, thereby validating their status as delegates.

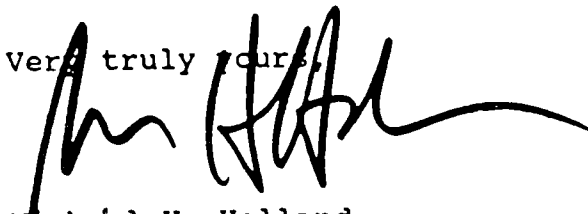
June 17, 1991

Mr. Gerald Moerler
Mr. Ray Nickum
Robert Marciel, Secretary-Treasurer
IBT Local 63

the Carey Slate as the delegates and alternate delegates to the 1991 IBT Convention from Local 63.]

If any interested party is not satisfied with this determination, they may request a hearing before the Independent Administrator within seventy-two (72) 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 filed with the Office of the Independent Administrator, IBT, c/o Walt Disney World Dolphin Hotel, Suite 1033, 1500 EPCOT Resort Boulevard, Lake Buena Vista, Florida 32820, Facsimile (407) 560-1370. Copies of the request for hearing must be served on the parties listed above, as well as upon the Election Officer, IBT, c/o Walt Disney World Dolphin Hotel, Australia 3, 1500 EPCOT Resort Boulevard, Lake Buena Vista, Florida 32820, Facsimile (407) 560-1365. A copy of the protest must accompany the request for a hearing.

Very truly yours,



Michael H. Holland
Election Officer

MHH/lb

cc. Frederick B. Lacey, Independent Administrator, IBT
Geraldine Leshin, Regional Coordinator
Bruce Boyens, Regional Coordinator
Susan Jennick, Esq
Robert Vogel, Esq
Susan Davis, Esq

IN RE:	:	91 - Elec. App. - 167 (SA)
	:	
GERALD MOERLER	:	
and	:	
INFORMED TEAMSTERS FOR THE GOOD OF ALL SLATE	:	
and	:	DECISION OF THE
IBT LOCAL UNION NO. 63	:	INDEPENDENT
	:	ADMINISTRATOR
	:	

This decision supplements the Memorandum and Order of the Independent Administrator issued in this matter on June 20, 1991. This matter calls for the Independent Administrator to address conduct which strikes at the heart of "fair, honest, and open elections." Rules For The IBT International Union Delegate And Officer Election (The "Election Rules"), Preamble at p.2.

Two slates campaigned for the seventeen delegate positions and six alternate delegate positions available at Local 63. The one slate is "The Ron Carey Slate" and the other slate is "The Informed Teamsters For The Good Of All Slate" ("Informed Teamsters Slate"). Although none of the officers of Local 63 sought election as a delegate or an alternate, the Election Officer's investigation revealed that the Informed Teamsters Slate was created, financed, and controlled by the leadership of Local 63. Having reviewed the details of the Election Officer's investigation (as contained in his June 17, 1991, Decision and his Summary), I accept this finding.

I find it significant that no member of the Informed Teamsters

Slate appeared at the hearing before me. Instead, the Informed Teamsters Slate relied on a submission allegedly prepared by Robert Doss, an alternate delegate on the Informed Teamsters Slate.' In his letter, Mr. Doss denied the fact that the members of the Informed Teamsters Slate were puppets for the officers of Local 63. Mr. Doss suggested the Election Officer's investigation was inadequate on this issue. Despite Mr. Doss' suggestion, the Election Officer's investigation was extensive and included the deposition of the named appellant here--Ray Nickum--another member of the Informed Teamsters Slate.

For this matter to be viewed in its proper context, it is necessary to review the many past appeals involving Local 63 and the Informed Teamsters Slate that have come before the Independent Administrator.

In December of 1990, the Independent Administrator found a violation of the Election Rules when Local 63 shop stewards removed "Ron Carey" campaign material that had been posted on Union bulletin boards at various worksites. An appropriate remedy was ordered. See In Re: Cetinske and Local 63, 90 - Elec. App. - 21

'Ms. Jennik, on behalf of the protestors, alleged that an attorney prepared Mr. Doss' letter. More specifically, Ms. Jennik suggested that Local 63's attorney, Mr. Vogel, prepared the letter. While a review of the letter does suggest that it was, in fact, the handiwork of an attorney, I need not, and will not, address the question of whether Mr. Vogel prepared, or participated in, the preparation of the Doss letter. As the Election Officer explained at the hearing, he is currently investigating a protest regarding Mr. Vogel's participation in the Informed Teamsters Slate campaign. The protestors herein are free to bring this matter to the Election Officer's attention as part of that investigation.

(December 21, 1990).

In February, 1991, the Independent Administrator reviewed and remedied yet another situation involving a shop steward interfering with the posting of "Ron Carey" campaign material on Union bulletin boards. See In Re: Moerler and Local 63, 91 - Elec. App. - 75 (SA) (February 19, 1991).

In March of 1991 the Independent Administrator was faced with a situation where Local 63 refused to comply with its obligations under the Election Rules in providing members of the Ron Carey Slate with a complete worksite list. The Independent Administrator found that the Local had violated the Election Rules and affirmed the Election Officer's direction that Local 63 pay for a campaign mailing on behalf of the Ron Carey Slate. See In Re: Moerler and Local 63, 91 - Elec. App. - 102 (SA) (March 19, 1991). As revealed at the hearing before me in the instant case, the Ron Carey Slate continues to allege that Local 63 has yet to satisfy its obligation to supply complete worksites.²

In April of 1991, the Election Officer considered a post-election protest following the March delegate and alternate delegate elections conducted at Local 63. Members of the Ron Carey Slate secured fourteen out of the seventeen available delegate positions in that election. The remaining three spots went to members of the Informed Teamsters Slate. The only two members of the Ron Carey Slate who ran for alternate positions were duly

²I trust the Election Officer will continue to monitor Local 63's production of the worksite information.

elected. The Election Officer, however, ordered that the March election be rerun because of an error in the printing of the ballots. It was found that the printing error may have affected the outcome of the election. The Independent Administrator affirmed that ruling. See In Re: Nickum and Local 63, 91 - Elec. App. - 137 (April 30, 1991). It is a tribute to the impartiality of the Election Officer that given the history of the conduct of Local 63 up until that point, it was decided to give the Informed Teamsters Slate a second bite at the apple consistent with the protections provided in the Election Rules.

In April of 1991, the Independent Administrator addressed an appeal arising out of a situation where Local 63's Secretary-Treasurer displayed a shotgun rifle in the parking lot of Local 63 following a Local Union meeting. While the Election Officer did not find a violation of the Election Rules, he determined that weapons should not be brought to Local 63 Union meetings or displayed after Union meetings. Local 63 was directed to distribute a notice to that effect. Local 63 refused to cooperate with the Election Officer's directive and instead appealed to the Independent Administrator. The Independent Administrator affirmed the directive of the Election Officer. See In Re: Moerler and Local 63, 91- Elec. App. - 140 (SA) (May 1, 1991).

In May, 1991, an appeal came to the Independent Administrator involving what he described as "an extremely grave situation." In that matter, the Independent Administrator affirmed the Election Officer's finding that Local 63 representatives requested members

to surrender their mail ballots to them for collection. Such action flies in the face of the concept of a secret ballot vote and destroys the integrity of the entire election. On the appeal, the finding that the Local 63 representatives were collecting ballots from members was not challenged. What was challenged was the wording of the notice that the Election Officer had ordered in an attempt to prohibit such action from being repeated. The Independent Administrator affirmed the wording of the notice and directed Local 63 to comply in its distribution. In that same matter, the Independent Administrator found that Mr. Vogel, the Local's attorney, participated in the appeal on behalf of the Informed Teamsters Slate and represented their interest as opposed to the Local's interest. The Informed Teamsters Slate was directed to reimburse the Local for any monies paid to Mr. Vogel in connection with the appeal.³ In his decision in that matter, the Independent Administrator wrote:

If the Election Officer finds that the Informed Teamsters Slate has continued to violate the "Election Rules" and the Election Officer's orders, the Election Officer should consider all appropriate remedies available to him, including the disqualification of the Informed Teamsters Slate from the election.

See In Re: Moerler and Local 63, 91 - Elec App - 153 (SA) (May 30, 1991). As explained in greater detail below, it was the

³To date, Mr. Vogel has yet to supply an appropriate affidavit of service as he was compelled to in the decision.

continuation of this prohibited and repugnant conduct that forms the basis of the appeal currently under consideration.

In early June, 1991, Local 63 was again before the Independent Administrator. This time, it was determined that the Local Union unnecessarily delayed the issuance of the notice which it was compelled to distribute regarding the prohibition of firearms at Union meetings. There the Independent Administrator affirmed the Election Officer's direction that the Local reimburse the Election Officer \$300 towards his costs expended in investigating and resolving Local 63's failure to comply See In Re: Moerler and Local 63, 91 - Elec App. - 157 (SA) (June 7, 1991).

Less than two weeks later, Local 63 again found itself on the Independent Administrator's appellate docket. This time Local 63 had favored the Informed Teamsters Slate by providing it with phone numbers of members without affording the Ron Carey Slate the same opportunity. Given the imminent rerun election, the Election Officer declined to issue a remedy, but rather indicated that he would address the matter post-election if appropriate.

This brings us to the matter under consideration. The rerun election resulted in the Informed Teamsters Slate capturing all of the delegate spots and all of the alternate spots. The margin of victory in the delegate race between the lowest ranking winning candidate and the highest ranking losing candidate was 178 votes

In the alternate delegate race the difference was 227 votes.⁴

The Ron Carey Slate challenged the election results in a post-election protest alleging that:

(1) Ballots were solicited, collected, and marked by members of the Informed Teamsters Slate and officials of Local 63 in violation of Article XII, Section 3(d);

(2) Local 63's officers failed to provide the Ron Carey Slate with a complete and accurate worksite list in violation of Article VIII, Section 1 and in violation of prior directives of the Election Officer;

(3) Local 63's officers failed to notify the Ron Carey Slate of a list of its members' telephone numbers which they provided to the Informed Teamsters Slate in violation of Article VIII, Section 10(c);

(4) Ron Carey Slate literature was removed from bulletin boards in violation of Article VIII, Section 10;

(5) Ron Carey Slate members were physically threatened by supporters of the Informed Teamsters Slate in violation of Article VIII, Section 10;⁵

(6) Local 63's officers failed to comply with past orders of the Election Officer and have engaged in a pattern of violations.

While each of these allegations standing on its own constitutes a

⁴Mr. Doss challenged the Election Officer's calculations regarding the margin of victory. Mr. Doss suggests that the margin was even higher. Given that the Election Officer was intimately involved in supervising and conducting the election, I credit his numbers and reject Mr. Doss' alternate calculations.

⁵The Election Officer is continuing his investigation of this charge.

serious violation of the Election Rules, the fact that ballots were taken from Local 63 members and marked by members of the Informed Teamsters Slate and officials of Local 63 is so antithetical to the March 1989 Consent Order's goals that a severe remedy is in order. In short, any candidate (or slate of candidates), who demonstrates such a blatant disregard of the sacredness of the secret ballot must be precluded from participating in the election process. Thus, the Election Officer's remedy here, the disqualification of the Informed Teamsters Slate and the certification of the Ron Carey Slate, is affirmed in all respects. In fact, given the background against which this protest must be measured, no lesser remedy would be warranted.

Judging this matter under the post-election protest standards set forth in the Election Rules at Article XI, Section 1 b.(2) ("Post-election protests shall only be considered and remedied if the alleged violation may have affected the outcome of the election"), it belies logic to suggest that the actions of the Informed Teamsters Slate here did not affect its outcome. Despite the best efforts of the Informed Teamsters Slate to frustrate the investigation of the Election Officer, that investigation revealed that ballots were collected and marked at worksites on a broad basis throughout the Local. This finding is well founded and is accepted.

In approving the Election Rules, United States District Court Judge David N. Edelstein stated that:

This Court has reiterated that this Consent Decree is a unique attempt to cleanse this Union. These election rules are the linchpin of that effort. This Court will only approve election rules that will guarantee honest, fair, and free elections completely secure from harassment, intimidation, coercion, hooliganism, threats, or any variant of these no matter under what guise.

United States v. International Brotherhood of Teamsters, 742 F.Supp 94, 97 (S D.N.Y. 1990) aff'd. slip op. (2d Cir. April 12, 1991). The leadership of Local 63 and the members of the Informed Teamsters Slate conducted themselves as if no Election Rules existed. They demonstrated a total and complete disregard of any basic concept of decency and fair play. Obviously, their interest in being elected took precedence over the members' interests. This cannot be tolerated. The members' right to a free, fair, and open election is paramount and cannot be compromised.

In his submission, Mr. Doss suggested that the Election Officer should cause the delay of the International Convention to afford Local 63 the opportunity to rerun, yet again, its delegate and alternate delegate election. This suggestion is absurd. The Independent Administrator simply will not condone delaying, for one second, this Convention so that the Informed Teamsters Slate and the officers of Local 63 can be given another opportunity to ignore and discredit the Election Rules.

Mr. Doss' alternate suggestion, that no representatives of the Local be sent to the Convention, is also rejected. Members of Local 63 will not be punished; they deserve representation at the

Convention and the Election Officer is within his authority to certify the Ron Carey Slate to afford Local 63 that representation. The Election Rules specifically grant the Election Officer the authority to disqualify "any member from seeking any delegate, alternate delegate, or International Officer position." Election Rules, Article XI, Section 2.

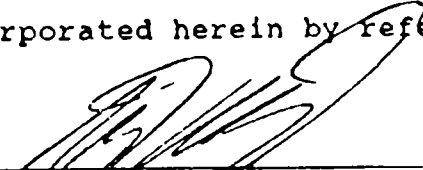
At the hearing before me, a request was made on behalf of the Ron Carey Slate for relief beyond that afforded by the Election Officer. It was first asked that the Informed Teamsters Slate compensate the Ron Carey Slate for all expenses incurred in the rerun election and incurred in successfully pursued protests and appeals during the course of the rerun election. This request has merit. The rerun process was made a mockery by the conduct of the Informed Teamsters Slate. That the members of the Ron Carey Slate were required to expend valuable funds on the process is clearly a wrong deserving of a remedy. Thus, I ask that the Ron Carey Slate submit to the Independent Administrator, within 14 days, an affidavit setting forth all reasonable costs and expenses incurred by it in the rerun election, including all reasonable costs and expenses incurred in protests and appeals during the course of the rerun election in which the Ron Carey Slate prevailed. After reviewing that affidavit, I will issue a supplemental order compelling the members of the Informed Teamsters Slate to compensate (from their own funds) the Ron Carey Slate for all reasonable costs and expenses.

It was also requested that a notice be distributed to Local

63's members explaining to them why the Ron Carey Slate is representing them at the Convention. This is indeed appropriate. The members of Local 63 must understand what has happened here. Thus, I direct Local 63 to put a copy of this opinion on all Local Union bulletin boards. Where appropriate, that notice should appear in Spanish. The Election Officer shall cause the translation to be prepared and the members of the Informed Teamsters Slate shall compensate (from their personal funds) the Election Officer for all costs involved in that process. The decision is to remain posted through to the certification of the election results for International Officers.

It was further requested that the Election Officer's findings be reported to the Investigations Officer and the United States Department of Justice for any action that may be deemed appropriate. I also find this request reasonable and will forward a copy of this decision to the Investigations Officer and the Assistant United States Attorney with primary responsibility for this matter.

The Election Officer's decision and all of his findings are affirmed in all respects. A copy of the Election Officer's decision is attached hereto and incorporated herein by reference.



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

Dated: June 22, 1991

IN RE:	:	91 - Elec. App. - 167 (SA)
GERALD MOERLER	:	
and	:	
INFORMED TEAMSTERS FOR THE GOOD OF ALL SLATE	:	MEMORANDUM AND ORDER
and	:	
IBT LOCAL UNION NO. 63	:	

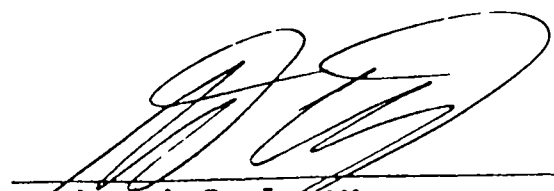
This matter involves an appeal from a decision of the Election Officer in Case No. Post 73-LU63-CLA. A hearing was held before me on June 20, 1991, at which the following persons were heard via telephone conference: Gerald Moerler; Mr. Moerler's attorney, Susan Jennik; Mr. Robert Vogel, an attorney on behalf of Local Union 63; Susan Davis, an attorney on behalf of The Committee to Elect Ron Carey; and Geraldine L. Leshin, the Election Officer's Regional Coordinator. The appellants, The Informed Teamsters for the Good of All Slate (the "Informed Teamsters"), did not appear at the hearing, but rather relied on a pre-hearing submission of Robert Doss, a member of the Slate. John J. Sullivan and Barbara Hillman on behalf of the Election Officer, appeared in person.

At the conclusion of the hearing a Bench Opinion was issued affirming the Decision of the Election Officer. That opinion will be supplemented by a written decision which will issue in the near future. Ms. Jennik's request for additional remedies will be addressed in the written decision which will follow.

It is hereby ordered that.

1. The June 17, 1991, decision of the Election Officer is affirmed in all respects.

2. Local 63 shall immediately comply with all of its obligations flowing from that decision including, but not limited to, sending the delegates affiliated with The Delegates For Ron Carey Slate to the 1991 International Convention and paying their expenses consistent with the Election Officer's Advisory Regarding Convention Expenses.



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

Dated: June 20, 1991

IN RE:	:	91 - Elec App. - 167 (SA)
GERALD MOERLER	:	
and	:	
INFORMED TEAMSTERS FOR THE GOOD OF ALL SLATE	:	
and	:	DECISION OF THE
IBT LOCAL UNION NO. 63	:	INDEPENDENT ADMINISTRATOR

This decision supplements the Memorandum and Order of the Independent Administrator issued in this matter on June 20, 1991. This matter calls for the Independent Administrator to address conduct which strikes at the heart of "fair, honest, and open elections." Rules For The IBT International Union Delegate And Officer Election (The "Election Rules"), Preamble at p.2.

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Slate appeared at the hearing before me. Instead, the Informed Teamsters Slate relied on a submission allegedly prepared by Robert Doss, an alternate delegate on the Informed Teamsters Slate.¹ In his letter, Mr. Doss denied the fact that the members of the Informed Teamsters Slate were puppets for the officers of Local 63. Mr. Doss suggested the Election Officer's investigation was inadequate on this issue. Despite Mr. Doss' suggestion, the Election Officer's investigation was extensive and included the deposition of the named appellant here--Ray Nickum--another member of the Informed Teamsters Slate.

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continuation of this prohibited and repugnant conduct that forms the basis of the appeal currently under consideration.

In early June, 1991, Local 63 was again before the Independent Administrator. This time, it was determined that the Local Union unnecessarily delayed the issuance of the notice which it was compelled to distribute regarding the prohibition of firearms at Union meetings. There the Independent Administrator affirmed the Election Officer's direction that the Local reimburse the Election Officer \$300 towards his costs expended in investigating and resolving Local 63's failure to comply. See In Re: Moerler and Local 63, 91 - Elec. App. - 157 (SA) (June 7, 1991).

Less than two weeks later, Local 63 again found itself on the Independent Administrator's appellate docket. This time Local 63 had favored the Informed Teamsters Slate by providing it with phone numbers of members without affording the Ron Carey Slate the same opportunity. Given the imminent rerun election, the Election Officer declined to issue a remedy, but rather indicated that he would address the matter post-election if appropriate.

This brings us to the matter under consideration. The rerun election resulted in the Informed Teamsters Slate capturing all of the delegate spots and all of the alternate spots. The margin of victory in the delegate race between the lowest ranking winning candidate and the highest ranking losing candidate was 178 votes.

In the alternate delegate race the difference was 227 votes.⁴

The Ron Carey Slate challenged the election results in a post-election protest alleging that:

(1) Ballots were solicited, collected, and marked by members of the Informed Teamsters Slate and officials of Local 63 in violation of Article XII, Section 3(d);

(2) Local 63's officers failed to provide the Ron Carey Slate with a complete and accurate worksite list in violation of Article VIII, Section 1 and in violation of prior directives of the Election Officer,

(3) Local 63's officers failed to notify the Ron Carey Slate of a list of its members' telephone numbers which they provided to the Informed Teamsters Slate in violation of Article VIII, Section 10(c);

(4) Ron Carey Slate literature was removed from bulletin boards in violation of Article VIII, Section 10;

(5) Ron Carey Slate members were physically threatened by supporters of the Informed Teamsters Slate in violation of Article VIII, Section 10;⁵

(6) Local 63's officers failed to comply with past orders of the Election Officer and have engaged in a pattern of violations.

While each of these allegations standing on its own constitutes a

⁴Mr. Doss challenged the Election Officer's calculations regarding the margin of victory. Mr. Doss suggests that the margin was even higher. Given that the Election Officer was intimately involved in supervising and conducting the election, I credit his numbers and reject Mr. Doss' alternate calculations.

⁵The Election Officer is continuing his investigation of this charge.

serious violation of the Election Rules, the fact that ballots were taken from Local 63 members and marked by members of the Informed Teamsters Slate and officials of Local 63 is so antithetical to the March 1989 Consent Order's goals that a severe remedy is in order. In short, any candidate (or slate of candidates), who demonstrates such a blatant disregard of the sacredness of the secret ballot must be precluded from participating in the election process. Thus, the Election Officer's remedy here, the disqualification of the Informed Teamsters Slate and the certification of the Ron Carey Slate, is affirmed in all respects. In fact, given the background against which this protest must be measured, no lesser remedy would be warranted.

Judging this matter under the post-election protest standards set forth in the Election Rules at Article XI, Section 1.b.(2) ("Post-election protests shall only be considered and remedied if the alleged violation may have affected the outcome of the election"), it belies logic to suggest that the actions of the Informed Teamsters Slate here did not affect its outcome. Despite the best efforts of the Informed Teamsters Slate to frustrate the investigation of the Election Officer, that investigation revealed that ballots were collected and marked at worksites on a broad basis throughout the Local. This finding is well founded and is accepted.

In approving the Election Rules, United States District Court Judge David N. Edelstein stated that:

This Court has reiterated that this Consent Decree is a unique attempt to cleanse this Union. These election rules are the linchpin of that effort. This Court will only approve election rules that will guarantee honest, fair, and free elections completely secure from harassment, intimidation, coercion, hooliganism, threats, or any variant of these no matter under what guise.

United States v. International Brotherhood of Teamsters, 742 F.Supp 94, 97 (S.D.N.Y. 1990) aff'd. slip op. (2d Cir. April 12, 1991). The leadership of Local 63 and the members of the Informed Teamsters Slate conducted themselves as if no Election Rules existed. They demonstrated a total and complete disregard of any basic concept of decency and fair play. Obviously, their interest in being elected took precedence over the members' interests. This cannot be tolerated. The members' right to a free, fair, and open election is paramount and cannot be compromised.

In his submission, Mr. Doss suggested that the Election Officer should cause the delay of the International Convention to afford Local 63 the opportunity to rerun, yet again, its delegate and alternate delegate election. This suggestion is absurd. The Independent Administrator simply will not condone delaying, for one second, this Convention so that the Informed Teamsters Slate and the officers of Local 63 can be given another opportunity to ignore and discredit the Election Rules.

Mr. Doss' alternate suggestion, that no representatives of the Local be sent to the Convention, is also rejected. Members of Local 63 will not be punished; they deserve representation at the

Convention and the Election Officer is within his authority to certify the Ron Carey Slate to afford Local 63 that representation. The Election Rules specifically grant the Election Officer the authority to disqualify "any member from seeking any delegate, alternate delegate, or International Officer position." Election Rules, Article XI, Section 2.

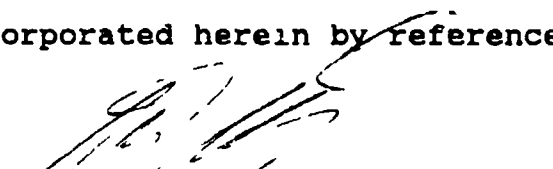
At the hearing before me, a request was made on behalf of the Ron Carey Slate for relief beyond that afforded by the Election Officer. It was first asked that the Informed Teamsters Slate compensate the Ron Carey Slate for all expenses incurred in the rerun election and incurred in successfully pursued protests and appeals during the course of the rerun election. This request has merit. The rerun process was made a mockery by the conduct of the Informed Teamsters Slate. That the members of the Ron Carey Slate were required to expend valuable funds on the process is clearly a wrong deserving of a remedy. Thus, I ask that the Ron Carey Slate submit to the Independent Administrator, within 14 days, an affidavit setting forth all reasonable costs and expenses incurred by it in the rerun election, including all reasonable costs and expenses incurred in protests and appeals during the course of the rerun election in which the Ron Carey Slate prevailed. After reviewing that affidavit, I will issue a supplemental order compelling the members of the Informed Teamsters Slate to compensate (from their own funds) the Ron Carey Slate for all reasonable costs and expenses.

It was also requested that a notice be distributed to Local

63's members explaining to them why the Ron Carey Slate is representing them at the Convention. This is indeed appropriate. The members of Local 63 must understand what has happened here. Thus, I direct Local 63 to put a copy of this opinion on all Local Union bulletin boards. Where appropriate, that notice should appear in Spanish. The Election Officer shall cause the translation to be prepared and the members of the Informed Teamsters Slate shall compensate (from their personal funds) the Election Officer for all costs involved in that process. The decision is to remain posted through to the certification of the election results for International Officers.

It was further requested that the Election Officer's findings be reported to the Investigations Officer and the United States Department of Justice for any action that may be deemed appropriate. I also find this request reasonable and will forward a copy of this decision to the Investigations Officer and the Assistant United States Attorney with primary responsibility for this matter.

The Election Officer's decision and all of his findings are affirmed in all respects. A copy of the Election Officer's decision is attached hereto and incorporated herein by reference.



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

Dated: June 22, 1991

IN RE:	:	91 - Elec. App. - 167 (SA)
	:	
GERALD MOERLER,	:	
	:	
and	:	SUPPLEMENTAL DECISION
	:	OF THE INDEPENDENT
INFORMED TEAMSTERS FOR THE	:	ADMINISTRATOR
GOOD OF ALL SLATE	:	
	:	
and	:	
	:	
IBT LOCAL UNION NO. 63	:	

On June 22, 1991, I issued a decision affirming the Election Officer's disqualification of the Informed Teamsters For The Good Of All Slate (the "Informed Teamsters Slate"). The Election Officer had disqualified the Informed Teamsters Slate following a rerun of Local 63's delegate and alternate delegate election. In the rerun election the Informed Teamsters Slate was opposed by the Ron Carey Slate; the Informed Teamsters Slate prevailed. The severe sanction of disqualification was imposed to remedy a serious violation of the Rules For The IBT International Union Delegate And Officer Election (the "Election Rules").¹ The Election Officer had discovered that during the rerun election, ballots had been taken from Local 63 members and marked by members of the Informed

¹ As a result of the Informed Teamsters Slate's disqualification the Ron Carey Slate was certified by the Election Officer to attend the 1991 IBT Convention.

Teamsters Slate and the officials of Local 63 who were supporting that Slate.

In my June 22, 1991, decision, I also granted the Ron Carey Slate's request for additional relief and ordered, inter alia, that the Informed Teamsters Slate reimburse the Ron Carey Slate for: (1) all expenses incurred in the rerun election; and (2) all expenses incurred in successfully pursued protests and appeals during the course of the rerun election. To that end, I asked that the Ron Carey Slate submit affidavits setting forth all reasonable costs and expenses incurred.

This Supplemental Decision will: (1) establish the amount the Ron Carey Slate is to be reimbursed; and (2) identify the individuals who shall be responsible for reimbursing the Ron Carey Slate.

THE AMOUNT TO BE REIMBURSED

In a July 12, 1991, Affidavit, the attorney for the Ron Carey Slate explained that she had devoted 42.75 hours to the rerun election and successfully pursuing protests regarding the rerun election. I have reviewed the details of this time and find that the 42.75 hours are reasonable.

The attorney, however, requests a fee of \$150 per hour. While the attorney's credentials are impressive, \$150 per hour is not reasonable under the circumstances. In this connection, I note that the hourly rate charged by labor attorneys are often less than

this amount. The Election Officer himself only charges \$125 per hour for his time. Under the circumstances, I find that a reasonable fee is \$100 per hour.

Thus, the Ron Carey Slate shall be awarded reasonable attorney fees totaling \$4,275 (42.75 hours x \$100).

I also received an Affidavit from Gerald Moerler, a member of the Ron Carey Slate and the named complainant in the underlying matter, setting forth the following out-of-pocket expenses incurred by the Ron Carey Slate:

\$ 704.23	-	printing expenses
112 00	-	copying expenses
77.00	-	additional printing expenses
3,624 29	-	mailing expenses
25.28	-	misc. supplies
60 64	-	computer layout charges
9.95	-	Express Mail charges
738.57	-	telephone expenses
913 92	-	mileage (at \$0 24/mile)
100.00	-	travel expenses for Spanish-speaking campaigner
<u> </u>		
\$6,365 88		

Mr. Moerler's Affidavit also reflects that he lost \$1,236.60 in wages and benefits for time off taken to campaign. Mr. Moerler further notes that Rob Paffenroth, a fellow member of the Ron Carey Slate, lost \$2,446 62 in wages and benefits for taking time off to campaign.

Thus, the total expenses incurred by the Ron Carey Slate are \$10,049.10. I find all of these expenses to be reasonable.

Combining the \$10,049.10 in expenses with the \$4,275 in attorney's fees, the total to be reimbursed to the Ron Carey Slate is \$14,324.10.

THE PERSONS RESPONSIBLE FOR REIMBURSING

In my June 22, 1991, decision, I stated that the Informed Teamsters Slate would be responsible for reimbursing the Ron Carey Slate. I did not, however, identify the individuals responsible. I will settle this issue now.

On August 6, 1991, the Election Officer issued a decision in Case No. P-747-LU63-CLA addressing the enforcement of various remedies that had been assessed against the Informed Teamsters Slate and its supporters during the course of the delegate election and the rerun election.

In his ruling the Election Officer highlighted the fact that in my June 22 decision I had found that the Informed Teamsters Slate was but an arm or agent of Local 63's officers. The Local Union officers selected the candidates to run on the Informed Teamsters Slate and directed and controlled their activities. Given this, the Election Officer deemed it appropriate that "Local Union 63's officers" should bear some financial responsibility for the remedies previously imposed on the Informed Teamsters Slate, including, but not limited to, the remedies imposed by my June 22 decision.

By letter I asked the Election Officer to identify the individuals he described in his decision as "Local Union 63's officers." The Election Officer provided me with the following list:

- | | | |
|-----|-----------------------|-----------------------|
| 1. | Robert E. Marciel | - Secretary-Treasurer |
| 2. | Robert G. Acquino | - President |
| 3. | Randy Cammack | - Vice-President |
| 4. | Hector Velez | - Recording Secretary |
| 5. | Raymond J. O'Leary | - Trustee |
| 6. | Margaret Peterson | - Trustee |
| 7. | Michael T. Washington | - Trustee |
| 8. | Anthony Beyelia | - Business Agent |
| 9. | Lawrence Casey | - Business Agent |
| 10. | Tony Cousimano | - Business Agent |
| 11. | John De Worken | - Business Agent |
| 12. | Ellsworth Hall | - Business Agent |
| 13. | Ken Haarala | - Business Agent |
| 14. | Richard Klingler | - Business Agent |
| 15. | Bill Logan | - Business Agent |
| 16. | Tim McLeary | - Business Agent |
| 17. | Jim Minisci | - Business Agent |
| 18. | Bob Molina | - Business Agent |
| 19. | Carl Norman | - Business Agent |
| 20. | Martin Perez | - Business Agent |
| 21. | Bob Profit | - Business Agent |
| 22. | Red Rascon | - Business Agent |
| 23. | Danny Torres | - Business Agent |
| 24. | Cat Vega | - Business Agent |
| 25. | Dallas Wimer | - Business Agent |
| 26. | Gordon Wilks | - Business Agent |

I agree with the Election Officer's conclusion that, under the circumstances, the Local 63 officers must shoulder some of the financial burden here. I also find it compelling that the Election Officer's conclusion was not appealed or otherwise challenged by any of the Local 63 officers.²

Notwithstanding the liability of the Local 63 officers, the individual members of the Informed Teamsters Slate must also share the responsibility. It was the individual members of the Slate

² Mr. Moerler did appeal the Election Officer's August 6, 1991, ruling claiming that the Election Officer had not properly accounted for certain monies in election funds maintained by Local 63. That appeal was denied in a September 16, 1991, decision in 91 - Elec. App. 184.

that permitted themselves to become the supplicants of the Local 63 officers.

The following individuals constituted the Informed Teamsters Slate:

1. Joe Arzate
2. Fred Beaudette
3. Tony Moreno
4. Jack Douglass
5. Bill Freitag
6. Bob Hayes
7. Windy Halterman
8. Mike Hanlon
9. Mark Hood
10. Mike Magurn
11. Lucille Morua
12. Terry Purrington
13. Harold Smith
14. Bob Stuver
15. Harold Taylor
16. Dennis Thompson
17. Tommy Wilson
18. Ronald H. Day
19. Raymond M. Nickum
20. Robert Doss
21. Raoul Wm. DeGroot

Several of these individuals wrote to me following my June 22 decision complaining that they should not be held responsible for making any financial restitution to the Ron Carey Slate. In many of these letters, the Slate members simply professed, in general terms, the fact that they are "honest and sincere" and never engaged in any "dirty tricks."

None of the Slate members appeared at the hearing before me prior to the issuance of the June 22 decision. Thus, the challenges raised by some of the members of the Informed Teamsters Slate to my June 22 decision in their recent letters are simply too

late. Moreover none of the Slate members ever applied to the Honorable David N. Edelstein of the United States District Court for the Southern District of New York to have my decision "stayed or overturned." See Election Rules, Article XI, Section 1a.(7). Furthermore, to the extent these letters could be treated as requests to reconsider my June 22 decision, I note that with the exception of the general pleas of innocence, no evidence suggesting that I had reached an erroneous conclusion was presented.

Some of the members of the Informed Teamsters Slate who wrote to me stated that they were never informed of the challenge to the rerun election, the hearing I conducted, or the fact that I issued a decision imposing sanctions upon the Informed Teamsters Slate. Such claims can only be viewed as disingenuous given that Raymond Nickum, on his behalf and on "behalf of the Informed Teamsters Slate" filed the original request for a hearing from the Election Officer's decision disqualifying the Informed Teamsters Slate. Moreover, Robert Doss, another member of the Informed Teamsters Slate, filed a lengthy written submission prior to the hearing. The opening paragraphs of that submission are enlightening on this issue:

This letter shall constitute the Informed Teamsters for the Good of All Slate's response to the Election Officer's June 17, 1991, decision in this case. It is my understanding Ray Nickum, a member of my slate, timely requested a hearing

Because of the extreme seriousness of this matter and the remedy imposed by the Election Officer, my slate has decided to send you this letter before the hearing

takes place tomorrow for your consideration and not participate directly in the hearing.

Given the submissions of Messrs. Nickum and Doss, it is evident that the Slate had notice of the underlying proceedings. Nickum's request for a hearing specifically stated that it was being filed "on behalf of the Informed Teamsters Slate." Doss' written submission also specially stated that it "constitute[d] the Informed Teamsters for the Good of All Slate's response" and that "the [S]late ha[d] decided to send [me a] letter before the hearing"

Robert Vogel, Local 63's attorney, also wrote to me asking that I reconsider my June 22 decision. Mr. Vogel argued that the Ron Carey Slate first requested additional remedies at the hearing and had not previously informed members of the Informed Teamsters Slate that it would be making such requests. Mr. Vogel also took issue with the fact that it was the Informed Teamsters Slate, not the Ron Carey Slate, that appealed the Election Officer's initial decision. As I noted in my written response to Mr. Vogel:

[Y]ou also take issue with the fact that the Carey Slate made requests for additional remedies at the hearing and had not previously informed members of the Informed Teamster Slate or Local 63 that it would be making such requests. You also point out that the Carey Slate did not appeal the Election Officer's initial decision. None of this has any bearing on the Independent Administrator's authority to impose appropriate remedies to address particular violations of the Election Rules. As you yourself observed, Article XI, Section 1.(8) of the Election Rules grants the Independent Administrator the power to order "whatever relief is appropriate to resolve the appeal." The relief ordered in this case was clearly appropriate to address

the gross violations of the Election Rules presented on the appeal.

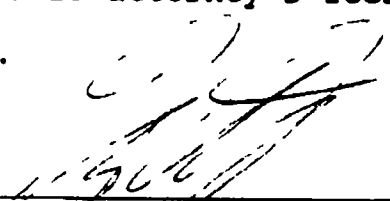
Mr. Vogel also relied on the fact that the rerun election was caused by an error in the printing of the ballots. This claim has no merit. As I stated in my response to Mr. Vogel:

{Y}our reliance on the fact that the rerun election was prompted by an error in the printing of the ballots is also misplaced. The Informed Teamsters Slate is not being ordered to reimburse the Carey Slate because it was responsible for the rerun, rather the additional remedies are being imposed because the Informed Teamsters Slate made a sham of the rerun.

Against this background, it is proper and just that the members of the Informed Teamsters Slate share the responsibility of compensating the Ron Carey Slate.

CONCLUSION

Accordingly, it is ordered that the 26 Local 63 officers listed herein and the 21 members of the Informed Teamsters Slate listed herein shall be jointly and severally liable for reimbursing the Ron Carey Slate \$14,324.10 in reasonable attorney's fees and costs associated with the rerun election.



Frederick B Lacey
Independent Administrator
By: Stuart Alderoty

Dated: September 18, 1991

ELECTION APPEAL 167

OCT 11, 1991

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA, :
 :
 Plaintiff, :

-v- : ORDER

INTERNATIONAL BROTHERHOOD OF : 88 CIV. 4486 (DNE)
 TEAMSTERS, CHAUFFEURS, :
 WAREHOUSEMEN AND HELPERS OF :
 AMERICA, AFL-CIO, et al, :
 :
 Defendants. :

-----X

IN RE. PETITION FOR REVIEW OF :
 DECISION 91-ELEC. APP.-167 OF :
 THE INDEPENDENT ADMINISTRATOR :
-----X

EDELSTEIN, District Judge:

WHEREAS petitioner appeals the September 18, 1991 decision of the Independent Administrator, which supplements the June 22, 1991 decision of the Independent Administrator, in 91-Elec. App.-167; and

WHEREAS the June 22, 1991 decision affirmed the Election Officer's disqualification of the Informed Teamsters For The Good Of All Slate (the "Informed Teamster Slate") for its serious violation of the Election Rules; and

WHEREAS the June 22, 1991 decision ordered that the Informed Teamster Slate reimburse the Delegates for Carey Slate for (1) expenses incurred in the rerun election, and (2) all expenses incurred in successfully pursued protests and appeals during the course of the rerun election; and

WHEREAS the September 18, 1991 established the amount to be reimbursed and the individuals responsible for reimbursing the Delegates for Carey Slate; and

WHEREAS the Independent Administrator's September 18, 1991 decision is in accordance with the purpose of the Election Rules to "guarantee honest, fair, and free elections completely secure from harassment, intimidation, coercion, hooliganism, threats, or any variant of these no matter under what guise." United States v. IBT, 742 F. Supp. 94, 97 (S.D.N.Y. 1990), aff'd, Nos. 90-6216, 6228, 6234, 6244, 6246, 6248, 6252, 6254, slip. op. at 3601 (2d Cir. April 12, 1991); and

WHEREAS this Court and the Court of Appeals have ruled that determinations of the Independent Administrator "are entitled to great deference." United States v. Int'l Brotherhood of Teamsters, 905 F.2d 610, 616 (2d Cir., 1990), aff'g March 13, 1990 Opinion & Order, 743 F. Supp. 155 (S.D.N.Y., 1990); and

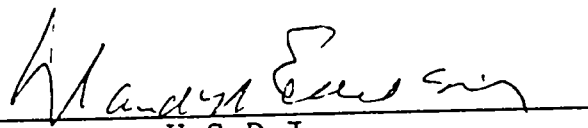
WHEREAS this Court will overturn findings of the Independent Administrator when it finds that they are, on the basis of all the evidence, "arbitrary and capricious." United States v Int'l Brotherhood of Teamsters, 905 F.2d at 622; October 9, 1991 Memorandum & Order, slip opinion, at 5 (S.D.N.Y. 1991); August 14, 1991 Memorandum & Order, slip opinion, at 4 (S.D.N.Y. 1991); July 31, 1991 Memorandum & Order, slip opinion, at 3-4 (S.D.N.Y. 1991); July 18, 1991 Memorandum & Order, slip opinion, at 3-4 (S.D.N.Y. 1991); July 16, 1991 Opinion & Order, slip opinion, at 3-4 (S.D.N.Y. 1991); June 6, 1991 Opinion & Order, slip opinion, at 4-5 (S.D.N.Y. 1991), May 13, 1991 Memorandum & Order, 764 F. Supp. 817, 820-21 (S.D.N.Y. 1991); May 9, 1991 Memorandum & Order, 764 F. Supp. 797, 800 (S.D.N.Y. 1991), May 6, 1991 Opinion & Order, 764 F. Supp. 787, 789 (S.D.N.Y. 1991); December 27, 1990 Opinion & Order, 754 F. Supp. 333, 337 (S.D.N.Y. 1990); September 18, 1990 Opinion & Order, 745 F. Supp. 189, 191-92 (S.D.N.Y. 1990); August 27, 1990 Opinion & Order, 745 F. Supp. 908, 911 (S.D.N.Y. 1990); March 13, 1990 Opinion & Order, 743 F. Supp. at 159-60, aff'd, 905 F.2d at 622; January 17, 1990 Opinion & Order, 728 F. Supp. 1032, 1045-57 (S.D.N.Y. 1990), aff'd, 907 F.2d 227 (2d Cir. 1990); November 2, 1989 Memorandum & Order, 725 F.2d 162, 169 (S.D.N.Y. 1989); and

WHEREAS upon review, the determination of the Independent Administrator is fully supported by the evidence;

IT IS HEREBY ORDERED that the September 18, 1991 supplemental decision of the Independent Administrator in 91-Elec. App.-167 is affirmed in all respects

SO ORDERED.

Dated: October 11, 1991
New York, New York



U.S.D.J.