

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

Michael H. Holland  
Election Officer

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November 19, 1991

**VIA UPS OVERNIGHT**

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

Vons Grocery Company  
4344 Shirley Avenue  
El Monte, California 91731

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

Re: Election Office Case No. P-1056-LU63-CLA  
Election Office Case No. P-1066-LU63-CLA

Gentlemen:

Protests were 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 Union 63. In his protest, Mr. Moerler claims that Vons Grocery Company ("*Vons*") continues to fail to comply with prior decisions rendered by the Election Officer and the Independent Administrator in connection with the posting of campaign literature on bulletin boards at Vons facilities.

In his protest in Election Office Case No. P-1056-LU63-CLA, Mr. Moerler contends that on November 5 and November 6, 1991 he visited respectively the Vons facilities at Santa Fe Springs and El Monte. At both sites, he claims that literature he recently posted had been removed and, at El Monte, both a company announcement and a notice, signed by the shop steward, Tom Tullius, with information about ordering Union shirts and jackets, were posted. While Mr. Moerler was present at the El Monte facility on November 6, 1991, a Vons supervisor removed the Vons' posting and Mr. Moerler was able to post his campaign literature. The supervisor refused to remove the Union posting. Mr. Moerler also alleges that company supervisors have allowed Mr. Tullius access to the board without supervision by the company.

With respect to the allegation that campaign posting had been improperly removed from the bulletin board, the Election Officer would note that a hearing was held before the Independent Administrator on November 5, 1991 concerning this very issue, i.e. Vons' appeal of the decision in Election Office Case No. P-882-LU63-CLA. After that

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hearing, a bench decision was issued immediately by the Independent Administrator obligating Vons to maintain control over these bulletin boards. To remedy its prior failure to do so, Vons was ordered to distribute campaign literature, provided it by Mr. Moerler, with the paychecks of all IBT members employed by Vons at both its El Monte and Santa Fe facilities.<sup>1</sup> The distribution took place on November 7, 1991.

Vons was ordered by the Independent Administrator to advise all of its supervisors at those facilities of their obligation to control the bulletin board postings. All Vons' supervisors were so advised by a memorandum issued shortly after the bench decision of the Independent Administrator. The events of which Mr. Moerler complains occurred prior to or at the same time that the matter was pending before the Independent Administrator. The matters of which he complains were remedied by the Independent Administrator's order obligating Vons to retain control of the bulletin boards, and the distribution which occurred on November 7, 1991.

Further, with respect to the alleged violation at El Monte on November 6, 1991, the Election Officer would note that assuming that Vons failed to remove the Union posting and such failure was a violation of its prior agreement regarding bulletin board access and thus a violation of the *Rules*, Mr. Moerler was not in any way harmed by the alleged violation. Mr. Moerler posted the literature he wished to post on the El Monte bulletin board on November 6, 1991; his access was not impeded by the Union posting.

The final allegation of Mr. Moerler's protest in Election Office Case No. P-1056-LU63-CLA contends that Mr. Tullius was given unsupervised access to the bulletin board violating the prior agreement of Vons' with respect to bulletin board access. The investigation failed to uncover any evidence supporting this allegation.

All possibly valid violations raised in this protest were fully decided and remedied by the decision of the Independent Administrator in 91-Elec. App.-222 affirming and enlarging the remedy in Election Office Case No. P-882-LU63-CLA. Accordingly, the protest is DENIED.

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<sup>1</sup> Election Office Case No. P-882-LU63-CLA concerned only the Santa Fe Springs Vons' facility. Since Mr. Moerler had pending three protests (Election Office Case Nos. P-990-LU63-CLA; P-999-LU63-CLA, P-1015-LU63-CLA) with similar allegations concerning the bulletin board at both the Santa Fe facility and the El Monte facility, the remedy was extended by the Independent Administrator to include the El Monte facility, thus disposing of those three protests. See 91-Elec.App.-222(SA).

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In Election Office Case No. P-1066-LU63-CLA, Mr. Moerler claims that a company memorandum was inappropriately posted on November 7 or 8, 1991 on the bulletin board at the Vons Boxford facility. Mr. Moerler contends that posting of official notices on this bulletin board violates the prior agreements of Vons with respect to use of the bulletin boards for campaign materials.

Mr. Moerler does not claim that the posting of a company notice on a bulletin board in any way harmed him or impeded his ability to have access to that board for campaign purposes. Mr. Moerler admits that despite the company posting there was sufficient room on the bulletin board for him to post his campaign literature and he did so post. Thus, even if a violation occurred, Mr. Moerler was not harmed.

Moreover, the Election Officer finds no basis for concluding that the posting of a company notice on the bulletin board at the Boxford facility -- assuming such a notice was there posted -- constitutes a violation of the *Rules*. The Election Officer's prior decisions and the prior agreement with respect to bulletin board usage concerned the bulletin boards at the El Monte and Santa Fe Springs facilities not the Boxford facility. See Election Office Case Nos. P-211-LU63-CLA and P-414-LU63-CLA, affirmed 91-Elec. App.-75. There is no extant agreement requiring Vons to refrain from placing official notices on the bulletin board at Boxford.

Mr. Moerler also claims in his protest in Election Office Case No. P-1066-LU63-CLA that Vons failed and refused to comply with the remedy ordered by the Independent Administrator in 91-Elec. App.-222. The decision of the Independent Administrator required Mr. Moerler to prepare, duplicate and deliver to Vons sufficient copies of the campaign literature which Mr. Moerler desired Vons to distribute; Vons was then to distribute such material in the paychecks provided IBT members employed at the Santa Fe Springs and El Monte facilities. Mr. Moerler prepared copies of the materials and delivered all copies to the Santa Fe Springs facility, claiming that it was inconvenient if not impossible for him to deliver the material to the El Monte facility. The delivery was accomplished on November 5, 1991. It should be noted however, from the protest in Election Office Case No. P-1056-LU63-CLA that Mr. Moerler was apparently at the El Monte facility on November 6, 1991, the day prior to the day on which the campaign literature was to be distributed.

On the morning of November 7, 1991, Mr. Moerler had a conversation with Dick Moran, a supervisor at the Santa Fe facility. Mr. Moran claimed that he did not have the fliers which had been previously delivered by Mr. Moerler. Mr. Moran also stated that he had not been yet notified that he should distribute any fliers with the November 7, 1991 payroll checks.

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Copies of the request for hearing must be served on the parties listed above, as well as upon the Election Officer, IBT, 25 Louisiana Avenue, N.W., Washington, D.C. 20001, Facsimile (202) 624-8792. A copy of the protest must accompany the request for a hearing.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael H. Holland", with a long horizontal flourish extending to the right.

Michael H. Holland

MHH/ca

cc: Frederick B. Lacey, Independent Administrator

Geraldine L. Leshin, Regional Coordinator

The Vons Company  
618 Minchillinda Avenue  
Arcadia, California 91007-1064  
Attention: Ted Harrison, Esquire  
Legal Department

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IN RE:

GERALD MOERLER

and

VONS COMPANIES, INC.

and

IBT LOCAL UNION NO. 63

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91 - Elec. App. - 236 (SA)

DECISION OF THE  
INDEPENDENT ADMINISTRATOR

This matter arises as an appeal from the Election Officer's decision in Case Nos. P-1056-LU63-CLA and P-1066-LU63-CLA. A hearing was held before me by way of telephone conference at which the following persons were heard: John Sullivan and Barbara Hillman for the Election Officer; Geraldine Leshin, a Regional Coordinator; Maurice Harrison for Vons Companies, Inc. ("Vons"); and Gerald Moerler, the Complainant.<sup>1</sup> In addition, the Election Officer 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").

This appeal involves yet another challenge by Mr. Moerler regarding the posting of campaign literature on employee bulletin

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<sup>1</sup> In addition, an attempt was made to reach Mr. Moerler's attorney, Susan Jennik, at her office. The receptionist at Ms. Jennik's office stated that she was on vacation. Ms. Jennik did not provide this office, or the Election Officer, with an alternative phone number where she could be reached.

boards at various Vons' facilities. This is the third such appeal by Mr. Moerler in as many weeks.

In In Re: Moerler, 91 - Elec. App. - 222 (SA) (November 12, 1991), I addressed Mr. Moerler's complaints concerning the locked bulletin boards at the Vons' facilities in El Monte and Santa Fe Springs, California. In that case I affirmed the Election Officer's finding that Vons' had violated the Election Rules by interfering with Mr. Moerler's campaign postings on the employee bulletin boards at those two facilities. As a remedy, Vons was directed to distribute, on a one time basis, Mr. Moerler's campaign material to the employees at the El Monte and Santa Fe Springs facilities in their pay envelopes.

In addition, I reaffirmed Vons' obligation to post campaign material within a reasonable time after a request to do so is made and to insure that such postings are not removed or replaced before the end of an agreed upon 30-day period. Still further, I directed that Vons' supervisors should keep the keys to the locked bulletin boards in their sole possession and custody to avoid third party interference with the campaign postings.

In In Re: Moerler, 91 - Elec. App. - 230 (SA) (November 21, 1991), I affirmed the Election Officer's dismissal of additional protests filed by Mr. Moerler concerning the bulletin boards at the same two facilities. I found that all of the issues raised by Mr. Moerler had been previously adjudicated and remedied in the earlier decision issued on November 7, 1991, in 91 - Elec. App. - 222.

In this matter, Mr. Moerler first contends that the misuse of the bulletin board at the Santa Fe Springs facility continues. At the hearing before me, however, Mr. Moerler acknowledged that the allegations concerning the Santa Fe Springs bulletin board pre-date my November 7, 1991, decision in 91 - Elec. App. - 222, and he offered nothing new at the hearing requiring any additional remedy concerning the bulletin board at that facility.

Mr. Moerler also alleges that a supervisor at Vons' Santa Fe Springs facility, Dick Moran, took exception to the literature that was distributed to the Santa Fe Springs' facility employees in their pay check envelopes. Mr. Moerler claims that Mr. Moran threatened that he would make Mr. Moerler "prove" the statements made in the literature, presumably in a law suit. Mr. Moran admits that he made these statements, but explains that he spoke out of outrage in response to some of the material contained in Mr. Moerler's literature.

It is clear that at least some portion of Mr. Moerler's literature could have been interpreted by Mr. Moran as disparaging or denigrating of Vons and its personnel. Although the Election Officer acknowledged that Mr. Moran could have had a more appropriate response, given the scenario developed here, the Election Officer did not find Mr. Moran's statements to be a threat that would constitute a violation of the Election Rules. The Election Officer reached the proper conclusion here. Neither the Election Officer nor Vons attempted to censor Mr. Moerler's



Mr. Moerler also complains that a "Union" advertisement regarding the purchase of Local Union jackets remained on the board at the El Monte facility and should have been removed to permit the posting of his fourth piece of campaign literature. As Vons explained at the hearing, however, the employee bulletin board at the El Monte facility is devoted to all employee literature and not just campaign literature. The advertisement in question was not "Union" literature as alleged but, rather constituted employee literature and thus was properly posted on the board.

Mr. Moerler also alleges that the Local's shop steward at the El Monte facility, Thomas Tullius, had improperly removed campaign material from the bulletin board. Mr. Moerler acknowledged, however, that his allegations regarding Mr. Tullius involved conduct that occurred at or about the time of my November 7, 1991, decision in 91 - Elec. App. - 222. Thus, any misuse of the bulletin board by Mr. Tullius, to the extent it exists at all, would have already been remedied by my November 7, 1991, decision.


Mr. Moerler further alleges that the campaign material that was to be distributed to the employees at the El Monte facility in their pay envelopes was not distributed to all of the employees. The Election Officer is currently investigating this matter pursuant to a separately filed protest in Case No. P-1087-LU63-CLA. The Election Officer has yet to issue a decision on that protest and thus, that matter is not properly before me at this time.<sup>3</sup>

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<sup>3</sup> Apparently, in his original protest, Mr. Moerler had also alleged that a facsimile copy of his campaign material was  
(continued...)

that the rights of IBT members to campaign openly and freely will be guaranteed. If it is found that Vons has violated any of those rights or has ignored any directive from the Election Officer or the Independent Administrator swift and appropriate action will be taken.

For the foregoing reasons, the denial of Mr. Moerler's protest is affirmed in all respects.



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

Dated: December 3, 1991