



OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
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December 2, 1991

VIA UPS OVERNIGHT

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

Everett J. Roberts, Trustee
Dick Walden, Business Agent
IBT Local Union 63
1616 W. Ninth Street
Room 205
Los Angeles, CA 90015

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

George Misso
Manager, Vons Boxford facility
c/o The Vons Companies, Inc.
6211 East Slauson
Commerce, CA 90040

Re: Election Office Case No. P-1087-LU63-CLA

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") by Gerald Moerler. In his protest, Mr. Moerler alleges that his rights under the *Rules* were violated by his employer, Vons Companies, Inc. ("Vons") with respect to the posting of campaign materials on a bulletin boards at various Vons facilities. In addition, Mr. Moerler alleges that Vons has failed to comply with the decision of the Independent Administrator in 91-Elec. App.-222, requiring Vons to distribute campaign literature to its Santa Fe Springs and El Monte employees with their November 7, 1991 paychecks at two of its locations.

Mr. Moerler is a member of IBT Local Union 63 and an employee of Vons at its Boxwood, California facility. Mr. Moerler's current protest is but the latest in a series of disputes between him and Vons pertaining to Vons' alleged obstruction of Mr. Moerler's right to post Ron Carey campaign materials on employee bulletin boards. See Election Office Case Nos. P-211-LU63-CLA and P-415-LU63-CLA, (Election Officer's approval of a settlement agreement providing for glass-enclosed, locked bulletin boards at Santa Fe Springs and El Monte facilities of Vons to be used exclusively for posting of employee notices, including campaign literature, affirmed by the Independent Administrator in 91-Elec. App.-75); Election Office Case No. P-882-LU63-CLA,

(Election Officer's finding that Vons violated the *Rules* by failing to abide by the previous settlement agreement, affirmed and the remedy expanded by the Independent Administrator in 91-Elec. App-222); Election Office Case Nos. P-990-LU63-CLA, P-999-LU63-CLA and P-1015-LU63-CLA, (Election Officer's finding that violations had been remedied by the Independent Administrator's decision in 91-Elec. App.-222 (SA), affirmed by the Independent Administrator in 91-Elec. App.-230); Election Office Case Nos. P-1056-LU63-CLA and P-1066-LU63-CLA, (Election Officer's denial of protests affirmed by bench decision of the Independent Administrator).¹

In the current protest, Mr. Moerler specifically alleges that on November 13, 1991, George Misso, Vons plant manager at the Boxford facility, was seen by a Vons payroll department employee assisting Local 63 Business Agent Dick Walden in replacing Carey campaign materials with materials supporting the candidacy of R. V. Durham and the Durham Unity Team on the employee bulletin board located at the Vons Boxford facility. In addition, Mr. Moerler alleges that during the week of November 11, 1991, Vons supervisors at the El Monte facility allowed Carey campaign literature on the employees' board to be defaced and removed. Finally, Mr. Moerler alleges that Vons failed to comply with the Independent Administrator's decision in 91-Elec. App-222 (SA) by failing to distribute campaign materials to all of its Santa Fe Springs and El Monte employees along with their November 7, 1991 paychecks. The Election Officer's investigation, conducted by Regional Coordinator Geraldine Leshin and the Washington, D.C. office of the Election Officer, revealed the following.

I. The Bulletin Board at the Boxford Facility

The bulletin board at the Boxford facility was not subject to the settlement agreement approved by the Election Officer in Election Office Case Nos. P-211-LU63-CLA and P-414-LU63-CLA and affirmed by the Independent Administrator in 91-Elec. App.-75 (SA). Apparently, however, as a result of an informal agreement by and between Vons, Mr. Moerler and Local Union 63, the Boxford bulletin board has been divided into segments or quadrants with each separate segment or quadrant reserved for campaign literature supporting a particular candidate or slate of candidates for IBT International Union office.

On November 13, 1991, Local 63 Business Agent Dick Walden and the Boxford shop steward Roy Phillips posted R. V. Durham Unity Team campaign materials on the segment of the Boxford bulletin board designated for such use. The bulletin board was

¹ The Election Officer also issued a compliance decision in Election Office Case No. P-882-LU63-CLA, requiring Vons to compensate Mr. Moerler for expenses he incurred in reprinting campaign literature previously provided but lost by Vons. No appeal was taken from that compliance decision.

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unlocked by a Vons supervisor, the Boxford plant manager George Misso, at Messrs. Walden's and Phillips' request. After opening the bulletin board, Mr. Misso was called away to attend to other business and did not remain with Messrs. Walden and Phillips during the entirety of the time that they were posting campaign materials on the bulletin board.

At the time Messrs. Walden and Phillips sought to post campaign materials on behalf of R. V. Durham on the bulletin board, materials already posted on the bulletin board on behalf of Ron Carey were posted in such a manner that they encroached upon the space reserved, in accordance with the informal agreement discussed above, for the R. V. Durham Unity Team. While Mr. Walden or Mr. Phillips did remove the encroaching campaign literature, they immediately reposted it in the area of the bulletin board reserved for the Ron Carey Slate.

Mr. Moerler apparently concedes the material that he had previously posted was not removed but alleges that it was repositioned in such a way as to obscure other material posted on the Ron Carey Slate segment of the bulletin board.² Mr. Moerler further contends that he was prevented from gaining access to the bulletin board to reposition the Carey material moved by Mr. Walden or Mr. Phillips--and to post additional material--until November 14, 1991.³ On November 14, 1991, Mr. Moerler gained access to the Boxford bulletin board, repositioned one flyer already posted on the Ron Carey Slate segment of the bulletin board and posted three pages of new campaign materials.

No agreement approved by the Election Officer or the Independent Administrator exists with respect to the Boxford facility bulletin board, as it does with respect to the bulletin board at the Santa Fe Springs and El Monte facilities, requiring that Vons supervisory or managerial employees retain exclusive control over access to the bulletin board. The evidence does not support a conclusion that campaign material posted on behalf of Ron Carey or the Ron Carey Slate was physically removed from the bulletin board. Mr. Moerler was delayed or impeded but one day in obtaining access to the Boxford facility bulletin board to reposition the campaign material apparently

² To the extent that Mr. Moerler still contends that campaign material was removed--as opposed to being repositioned--the Election Officer investigation found no evidence to support this allegation; the evidence as determined by the Election Officer supports the conclusion that the material was encroaching on the R. V. Durham Unity Team portion of the bulletin board and was repositioned.

³ The supervisor contacted by Mr. Moerler on November 13, 1991 told Mr. Moerler that he would have to contact Mr. Misso before the bulletin board could be opened.

repositioned by Mr. Phillips or Mr. Walden and to post new material.⁴ The Election Officer concludes that the *Rules* were not violated and this portion of Mr. Moerler's protest is accordingly DENIED.

II. Defacement of Campaign Material on the Bulletin Board at the El Monte Facility

On November 6, 1991, Dwight Wilkins, a Local 63 member employed at the Vons El Monte facility, posted a photostat copy of a picture of IBT General President candidate Ron Carey on the employees' bulletin board at El Monte. Subsequently, the photocopy was removed and replaced with a colored picture--an actual photograph--of Ron Carey. Vons supervisors Debbie Hensel and Russ Diaz claim that Mr. Wilkins himself replaced his prior photocopy with the photograph; Mr. Wilkins denies doing so. Assuming that Mr. Wilkins did not replace the photograph copy with the photograph, the Election Officer has been unable to uncover the identity of the person who did so or the identity of the Vons supervisor who provided access to the bulletin board for the photocopy to be replaced by the photograph.

At any rate, it is apparent that the photocopy of Ron Carey's picture was replaced with a photograph of Ron Carey. Assuming a technical violation of the *Rules* and/or the prior settlement agreement approved by the Independent Administrator in 91-Elec. App.-75, by Vons permitting campaign material to be removed and replaced, it is clearly apparent that the candidacy of Ron Carey and/or his slate was not harmed thereby; a photograph is better than a photocopy of a photograph.

Sometime after the photocopy was replaced by the photograph, the photograph was defaced by the writing of the word "scab" across Mr. Carey's visage. Mr. Wilkins first noted that defacement on Saturday, November 9, when he reported to work at approximately 1:00 p.m.; he had seen the photograph which replaced his photocopy--but without the defacement--prior to that time. Mr. Wilkins immediately obtained access to the bulletin board and replaced the defaced photograph with another photocopy of Mr. Carey's picture.

Ms. Hensel and Mr. Diaz claim that the photograph without the defacement was first posted on November 8, 1991. Mr. Wilkins does not recall the date when he first noted that his photocopy of Mr. Carey's picture had been replaced with a photograph of Mr. Carey, but states that the first time he saw that the photograph was defaced was at or about 1:00 p.m. on November 9, 1991. The evidence supports the conclusion that

⁴ Given the profusion of protests filed by Mr. Moerler against Vons with respect to the bulletin boards, it is perhaps understandable why a supervisor would not provide access without the knowledge or approval of the plant manager, George Misso.

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or about 1:00 p.m. on November 9, 1991. The evidence supports the conclusion that the picture remained posted in its defaced condition for less than 24 hours.

While a member defacing and then posting campaign literature produced by an International Union officer candidate not supported by that member is not necessarily violative of the *Rules*, see Election Office Case No. P-1092-LU745-SOU, defacing campaign literature posted by another member is. The Election Officer investigation was unable to uncover the identity of the person who defaced the photograph of Ron Carey or the identity of the Vons supervisor who provided access to the bulletin board.

Assuming a violation by Vons of the *Rules* and/or of the settlement agreement approved by the Independent Administrator in 91-Elec. App.-75, the Election Officer declines to impose further remedies at this time. The photograph of Mr. Carey remained posted in a defaced condition for less than 24 hours. The Election Officer further notes that the violation occurred shortly after the issuance of the Independent Administrator's decision in 91-Elec. App.-222. Accordingly, while the Election Officer further admonishes Vons, as did the Independent Administrator during the hearing on the appeal from the Election Officer's decision in Election Office Case Nos. P-1056-LU63-CLA and P-1066-LU63-CLA, that it has an obligation to ensure that no person removes or defaces campaign literature posted by another on its Santa Fe Springs and El Monte bulletin boards, the Election Officer declines to impose additional remedies at this time.

III. Distribution of Campaign Literature

By bench decision issued on November 5, 1991, the Independent Administrator in 91-Elec. App.-222, ordered Vons to distribute campaign literature provided it by Mr. Moerler to all IBT members employed by it at its Santa Fe Springs and El Monte facilities with such employees' November 7, 1991 paycheck. Given the shortness of time between the November 5, 1991 bench decision, the time when Mr. Moerler provided Vons with the literature to be distributed and the time of paycheck distribution --further apparently attenuated by some confusion by and between Vons counsel and the supervisory or managerial employees at the facilities regarding the obligation to distribute the literature--the campaign literature provided by Mr. Moerler was not inserted in the employees' paychecks. The paychecks had already been sealed and the literature was distributed by hand simultaneously with the distribution of the paychecks; in other words, IBT members employed at Santa Fe Springs and El Monte were simultaneously handed both their paychecks and the literature being distributed on behalf of Mr. Moerler. Mr. Moerler contends, however, that not all IBT members employed at El Monte and Santa Fe Springs received the literature.

The Election Officer investigation determined that a few IBT members employed by Vons at its Santa Fe Springs and/or El Monte facilities--approximately six in

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number--did not receive a copy of the campaign literature at the time they received their paychecks for the week of November 4, 1991. None of these affected members were at work on November 7, 1991, the date when the payroll checks for the week of November 4, 1991 were distributed; three are part-time employees who were not scheduled to work on November 7, 1991, two were on vacation and one was absent for undisclosed reasons. All such employees received their paychecks on a date subsequent to November 7, 1991. At the time they each received their paycheck, they were not, however, provided with a copy of the campaign literature which, as noted above, was not sealed with the paycheck but was distributed by hand on November 7, 1991.

The Election Officer declines to find that Vons willfully violated the order of the Independent Administrator in 91-Elec. App.-222. All but a minute number of Vons Santa Fe Springs and El Monte employees received the campaign literature with their paychecks distributed on November 7, 1991. Indeed, of the six IBT members whom the Election Officer found did not receive the campaign literature, one stated that he saw and read the literature which Mr. Moerler had posted on the bulletin board.

Neither the decision of the Election Officer in Election Office Case No. P-882-LU63-CLA nor the decision of the Independent Administrator affirming and expanding that remedy in 91-Elec. App.-222 required that the campaign literature be sealed in the envelope with the employees' paychecks. The remedy ordered only required that Vons distribute the literature to its Santa Fe and El Monte employees at the time Vons provided them with their paycheck on November 7, 1991. The very few employees who did not receive the campaign literature were not at work on November 7, 1991 but obtained their paycheck for that week at a subsequent date. Assuming that the remedy imposed by the Independent Administrator required that Vons distribute campaign literature to its Santa Fe Springs and El Monte employees who received their paychecks for the week of November 4, 1991 on a date other than November 7, 1991, the Election Officer concludes that Vons has substantially complied with the requirements of the prior decisions and that no further remedy is required.⁵

If any interested party is not satisfied with this determination, they may request a hearing before the Independent Administrator within twenty-four (24) hours of their receipt of this letter. The parties are reminded that, absent extraordinary circumstances, no party may rely upon evidence that was not presented to the Office of the Election Officer in any such appeal. Requests for a hearing shall be made in writing, and shall be served on Independent Administrator Frederick B. Lacey at LeBoeuf, Lamb, Leiby & MacRae, One Gateway Center, Newark, New Jersey 07102-5311, Facsimile (201)

⁵ As noted above, Mr. Moerler, by posting the campaign literature distributed by Vons on the bulletin board, has himself provided an alternate means for IBT members employed by Vons to obtain the benefit of Mr. Moerler's campaign message.

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622-6693. Copies of the request for hearing must be served on the parties listed above, as well as upon the Election Officer, IBT, 25 Louisiana Avenue, N.W., Washington, D.C. 20001, Facsimile (202) 624-8792. A copy of the protest must accompany the request for a hearing.

Very truly yours,


Michael H. Holland

MHH/mjv

cc: Frederick B. Lacey, Independent Administrator

Geraldine L. Leshin, Regional Coordinator

The Vons Companies, Inc.
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