



OFFICE OF THE ELECTION OFFICER  
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Michael H Holland  
Election Officer

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January 3, 1991

**VIA UPS OVERNIGHT**

Kevin Lally  
1003 Oakridge Dr.  
Lanesville, IN 47136

Jerry T. Vincent  
Secretary-Treasurer  
IBT Local 783  
7711 Beulah Church Rd.  
Louisville, KY 40228

**Re: Election Office Case No. P-166-LU783-SCE**

Gentlemen:

A pre-election protest was filed pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules"). In his protest, Jerry T. Vincent contends that the *Rules* have been violated in that Kevin Lally has been permitted by his Employer, Dean Foods, to use the Employer's fax machine to file a protest with the Election Office.

The *Rules* do, in fact, prohibit financial contributions from among other entities, the IBT, its subordinate bodies, including Local Unions, and employers, made for the purpose of promoting the candidacy or the campaign of any individual. Additionally the prohibition extends beyond monetary contributions to the use of equipment, stationery, facilities and personnel of either the employer or the Union Article V, § 1.

While the *Rules* do prohibit such campaign contributions by Union and Employer, they do not prohibit employer or Union contributions in support of resolving protests, clarifying the *Rules*, or otherwise furthering the fundamental goal of fair, honest, and open elections. *Rules*, Preamble and Article I. The protest procedure is integral to that goal. In fact, the Election Officer frequently relies on documents or information generated by the Local and/or employer personnel to determine the eligibility of candidates or to otherwise resolve protests.

Kevin Lally  
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There is no allegation in this case that the Employer has discriminated against any IBT members in permitting access to the fax machine. Therefore the protest is DENIED.

If any person is not satisfied with this determination, he may request a hearing before the Administrator within twenty-four (24) hours of his receipt of this letter. Such request shall be made in writing and shall be served on Administrator Frederick B. Lacey at LeBoeuf, Lamb, Leiby & MacRae, One Gateway Center, Newark, N.J. 07102-5311, Facsimile (201) 622-6693. Copies of the request for hearing must be served on the parties listed above as well as upon the Election Officer, IBT, 25 Louisiana Avenue, N.W., Washington, D.C. 20001, Facsimile (202) 624-8792. A copy of the protest must accompany the request for a hearing. 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

Very truly yours

  
Michael H. Holland

MHH\mca

cc: Mr. Frederick B. Lacey  
Peggy Hillman, Regional Coordinator

IN RE:	:	91 - Elec. App. - 36
	:	
KEVIN LALLY,	:	
and	:	DECISION OF THE
	:	INDEPENDENT ADMINISTRATOR
JERRY T. VINCENT,	:	
IBT LOCAL UNION 783,	:	

This matter is before me on appeal from two decisions of the Election Officer in Election Office Case Nos. P-166-LU783-SCE ("Case No. 166"), issued January 3, 1991, and P-167-LU-783-SCE ("Case No. 167"), issued January 4, 1991. A hearing was conducted by way of teleconference at which the following persons were heard: John Sullivan, on behalf of the Election Officer; Peggy Hillman, the Regional Coordinator; Kevin Lally, a protestor/appellant; Jerry Vincent, a protestor/appellant; William Norris and Terry Osborne, on behalf of IBT Local Union 783 ("Local 783"); Terry Nevitt and Todd Brunner as witnesses for Kevin Lally.

The two above-referenced decisions of the Election Officer (Election Officer Case Nos. 166 and 167) were the subject of three separate appeals.

Case No. 166

Mr. Vincent's appeal in this matter asks that I reverse the Election Officer's decision and find that Mr. Lally violated the Election Rules by using his employer's facsimile ("fax") machine to file a protest with the Election Officer.

The Election Officer, in his January 3, 1991, decision in Case No. 166 found that:

The Rules do, in fact, prohibit financial contributions from among other entities, the IBT, its subordinate bodies, including Local Unions, and employers, made for the purpose of promoting the candidacy or the campaign of any individual. Additionally, the prohibition extends beyond monetary contributions to the use of equipment, stationery, facilities and personnel of either the employer or the Union. Article V, §1.

While the Rules do prohibit such campaign contributions by Union and Employer, they do not prohibit employer or Union contributions in support of resolving protests, clarifying the Rules, or otherwise furthering the fundamental goal of fair, honest, and open elections. Rules, Preamble and Article I. The protest procedure is integral to that goal. In fact, the Election Officer frequently relies on documents or information generated by the Local and/or employer personnel to determine the eligibility of candidates or to otherwise resolve protests.

There was no allegation before the Election Officer that the employer had discriminated against any IBT member in permitting access to its fax machine. Thus, he denied Mr. Vincent's protest.

I agree with the Election Officer that, while under the Rules, no employer is permitted to contribute anything to any campaign, the use of fax equipment of an employer that is proscribed does not apply to the purpose for which the equipment was used here by Mr. Lally, that is, filing a protest, as long as the employer's fax or other equipment is not made available on a discriminatory basis. I also note that Mr. Lally had said he would reimburse the employer for this use. Thus I affirm the

January 3, 1991, decision of the Election Officer in Case No. 166 in denying the protest by Mr. Vincent, Secretary-Treasurer of IBT Local 783.

In his January 4, 1991, decision at pp. 1-2, the Election Officer concluded that the use of fax equipment of the union for the same purpose (transmission of information related to election process, e.g., an election protest) does not violate the Election Rules. Parenthetically, I would uphold the Election Officer's determination concerning the use of fax equipment of the Union.

Case No. 167

Mr. Vincent and Mr. Lally both appealed the Election Officer's decision in Case No. 167.

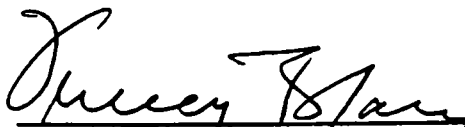
Mr. Vincent appeals the Election Officer's determination that the Local 783 officers retaliated against a member, Mr. Lally, for his filing a protest by visiting Mr. Lally's employer to "investigate" Mr. Lally's use of the fax machine. Mr. Lally appeals from the relief ordered, contending that it was inadequate to redress the wrong done to him.

Mr. Lally used his employer's fax machine. There is ample evidence to support the Election Officer's determination that this was done with the permission of the employer and that the use was to file a protest with the Election Officer. Thereafter, it appears that Mr. Vincent and Mr. Osborne, officers of the Union, went to Mr. Lally's place of employment to investigate the use by Mr. Lally of the employer's fax machine. While the

details of what was said at this meeting, which Mr. Lally attended, differ, I agree with the Election Officer that the differences are not material to my determination or to his. The fact is that the Local 783 officers went on the premises of the employer in a way that the Election Officer quite properly said was "premature, needlessly confrontational, and fraught with potential for intimidation." See Election Officer January 10, 1991, Summary, Findings of Fact and Conclusions of Law, §3 at p. 3. There is ample evidence to support the finding by the Election Officer that the action taken by the Local 783 officers was in fact improper and had the potential of having the effect of intimidating and chilling candidates who might be inclined to run against the incumbent officers. See Election Officer Summary, §§4-7 at p. 3. Accordingly, I affirm the determination of the Election Officer that the actions of Messrs. Vincent (Secretary-Treasurer) and Osborne (Business Representative) were improper. These gentlemen should have recognized that, given the sensitive nature of what was involved, their visit to the employer would be interpreted as an attempt to intimidate not only the candidate, Lally, but the employer as well.

Turning to the remedy imposed by the Election Officer, I affirm his decision as to these remedies, with one addition. Messrs. Vincent and Osborne are to write a letter to the employer stating that "the Election Officer and the Independent

Administrator have determined that Mr. Lally did nothing wrong and that they apologize for creating an incident brought on by thoughtless conduct on their part." A copy of that letter is to be sent to the Election Officer, the Independent Administrator and Mr. Lally. All of the other aspects of the decision of the Election Officer are affirmed and are to be complied with by Messrs. Vincent and Osborne.

  
FREDERICK B. LACEY  
INDEPENDENT ADMINISTRATOR

Date: January 14, 1991.