



OFFICE OF THE ELECTION OFFICER  
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January 4, 1991

**VIA UPS OVERNIGHT**

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

Kevin Lally  
1003 Oakridge Dr  
Lanesville, IN 47136

**Re: Election Office Case No. P-167-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 Kevin Lally alleges that the *Rules* have been violated in that (1) Local 783 officers have been permitted to use Local 783's fax machines to file protests, (2) Local 783 has improperly limited the use of a Union bulletin board located at Dean Foods, (3) Local 783 officers have improperly used the services of the Local Union attorney; (4) Local Union officers Jerry Vincent and Terry Osborne have retaliated against Lally because he has filed a protest with the Election Officer

The investigation shows the following: the Local Union officers have used the facilities of the Local Union to file protests with the Election Officer. The Local Union officers have also sought advice from counsel with respect to protest investigations. Neither of these activities is impermissible under the *Rules*.

The *Rules* do 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. *Rules*, Article V § 1.

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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. The Election Officer does require that such services in furtherance of protest be available to all on an equal basis.

There is no allegation that the Local 783 has discriminated in its provision of services, personnel, or equipment with respect to filing protests. Therefore this aspect of the protest is DENIED. See also The Election Officer's decision in P-164-LU783-SCE involving a similar dispute between these same parties. 166

The investigation shows that there is no evidence that the Union's bulletin board located at Dean Foods has been used in the past as a general purpose bulletin board. There is another separate driver's bulletin board located on the premises where personal items, such as for sale advertisements, rentals, and the like are posted. Since there is no evidence of past general purpose usage of the Union bulletin board, the Election Officer will not require the Board to be used for campaign postings. Accordingly, this aspect of the protest is DENIED.

Campaign postings, however, should be permitted on the driver's board which is used for posting of personal items. There is no allegation in this case that campaign postings have not been permitted on the driver's bulletin board.

Lally also contends that Jerry Vincent, Secretary-Treasurer of Local 783, and Terry Osborne, the recording secretary of Local 783, retaliated against him because he filed a protest with the Election Office. The investigation of this aspect of the protest shows the following: on December 19, Regional Coordinator, Peggy Hillman discussed with Local 783 attorney, Herb Segal, the issue raised in protest subsequently filed by Local 783 concerning Lally's use of Dean Foods' fax machine. She told Mr. Segal that she believed that the Election Office would not find the *Rules* to be violated because a fax machine was used for protest purposes. Following this conversation, Vincent and Osborne went to Dean Foods, where Mr. Lally is employed, and asked plant manager Carl Powell if he knew that Lally was using company property for campaign purposes. The two officials then demanded that plant manager Powell call Lally into a meeting and confront him about the use of the fax. Subsequently a meeting was held with Mr. Lally. During the meeting Secretary-Treasurer Vincent accused Lally of stealing if he did not have permission to use the fax.

Plant manager Powell has informed the Election Officer that Lally, in fact, had permission to use the fax, that Dean Foods commonly allowed its employees to use the fax, and that no adverse action will be taken against Lally, despite the Union officers' complaint about Lally.

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The Local Union officers Vincent and Osborne told the Election Officer that they were only investigating a protest. However, investigation of a protest need not involve precipitatory confrontation between Employer and the member, inviting discipline of the IBT member. The Election Officer finds that the Local officers did retaliate against Lally because of his protest activity.

The Election Officer considers conduct that interferes with the orderly resolution of protests, and the access of IBT members to the dispute resolution process set up by the Election Officer to be most serious. The members who seek decisions from the Election Officer must be free to do so without fear that their use of the Election Process will ultimately cost them their livelihood. Conduct by Local 783 officers which makes potential job loss the price the IBT member pays for participating in the Election Process will not be tolerated.

The *Rules* have been violated by Local 783 Secretary-Treasurer Jerry Vincent and Recording Secretary Terry Osborne in that they have engaged in conduct that interfered with and threatened IBT member Kevin Lally solely because he filed a protest with the Election Officer.

To remedy this violation the Election Officer orders the following

1. Jerry Vincent and Terry Osborne shall cease and desist from threatening, intimidating, investigating or otherwise harassing or seeking to influence Employers to discipline any member of Local 783 for the reason that the member files a protest.
2. Jerry Vincent and Terry Osborne shall cease and desist from intimidating, threatening, investigating, and/or seeking to influence any Employer to discipline Kevin Lally in order to deny Kevin Lally access to the IBT Election Process.
3. The Local Union officers Jerry Vincent and Terry Osborne shall sign the enclosed notice and post the notice on the Union Bulletin Board at Dean Foods and at all other Bulletin Boards located throughout the Local's jurisdiction. The notice shall remain posted until the 1991 IBT Election is concluded.
4. Local Union officer Jerry Vincent shall read the enclosed notice at the next membership meeting.
5. Local Union Secretary-Treasurer Jerry Vincent shall file an affidavit with the Election Officer no later than January 20, 1990, indicating all steps that have been taken to comply with this Order.

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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 / JJS*

Michael H Holland

cc Frederick B Lacey, Independent Administrator, IBT  
Peggy A Hillman, Regional Coordinator

NOTICE TO ALL MEMBERS OF IBT LOCAL UNION 783  
FROM THE UNDERSIGNED  
OFFICERS AND REPRESENTATIVES OF LOCAL UNION 783

You have the right to participate in campaign activities on behalf of any candidate for International Office in the IBT.

You have the right to participate in campaign activities on behalf of any candidate for delegate to the 1991 IBT International Convention.

You have the right to file a protest with Election Officer Michael Holland in the event you believe your campaign rights have been violated.

It is a violation of the Election Rules for any Local Union officer or IBT member to threaten, intimidate, coerce, or harass a member because they file a protest with the Election Officer.

Local Union 783 will not interfere with the exercise of any of these rights including the right to file protests as set forth in the Election Rules for the IBT International and Delegate Officer Election.

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William D. Norris, President, Local 783

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Jerry Vincent, Secretary-Treasurer, Local 783

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Terry Osborne, Recording Secretary, Local 783

This is an official notice and must remain posted for thirty consecutive days from the day of the posting, and must not be altered, defaced, or covered by any other material.

PREPARED AND APPROVED BY MICHAEL H. HOLLAND, ELECTION OFFICER, IBT

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IN RE:

    KEVIN LALLY,

        and

    JERRY T. VINCENT,  
    IBT LOCAL UNION 783,

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DECISION OF THE  
INDEPENDENT ADMINISTRATOR

This matter is before me on appeal from two decisions of the Election Officer in Election Office Case Nos. ~~783-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



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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.

  
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FREDERICK B. LACEY  
INDEPENDENT ADMINISTRATOR

Date: January 14, 1991.