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March 1, 1991

**VIA UPS OVERNIGHT**

Kevin Lally  
1003 Oakridge Drive  
Lanesville, In 47136

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

All Other Slate Members  
Listed on Attachment A

**Re: Election Office Case No. P-338-LU783-SCE**

Gentlepersons

On or about January 22, 1991, Mr Kevin Lally filed a pre-election protest under Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") Mr Lally, in his protest, alleged five claims arising out of a campaign mailing by an opposing slate of candidates for delegate and alternate delegate to the 1991 IBT International Convention By letter dated February 5, 1991, the Election Officer informed the parties that he was deferring, pursuant to his authority under Article XI, Section 1(a)(4)(b) of the *Rules*, ruling on the following claims until after the Local Union 783 delegate election

- 1) Use of Union funds for campaigning,
- 2) Use of Union equipment not available to other candidates,
- 3) Use of Union personnel to perform campaign-related tasks while being paid by the Local, and
- 4) Use of a portion of official stationery on campaign material

The Election Officer's investigation revealed the following.

Kevin Lally is a member of Local Union 783 and was a candidate for delegate to the IBT International Convention running on a slate with other members of the Local

Union, i e , the "New United Teamsters Local 783 Slate " Jerry Vincent is the Secretary-Treasurer of the Local Union and was also a candidate for delegate running on another slate, i e , the "Teamsters Local 783 Slate " The election was conducted through a mail ballot with the ballots mailed to members on January 14, 1991 and counted on February 6, 1991 Mr Vincent's slate prevailed in the election <sup>1</sup>

In December, 1990 Vincent distributed a notice to all nominated candidates regarding the costs of mailing campaign literature to the Local Union membership The notice informed the candidates that a fee of thirty cents (\$ 30) per piece would be charged by the Local Union for postage and affixing mailing labels. The notice also stated the labor costs for typing, folding and stuffing campaign material performed by union clerical staff The notice did not state that payment had to be made in advance or at the time that the services were actually provided

On January 8, 1991, Vincent distributed another notice to candidates informing them that they could also use a mail house for the mailing of campaign literature The mail house quoted a price of \$1300 00 for the bulk postage, labeling and metering 5,000 pieces of campaign literature, i e , \$ 26 a piece The quote did not indicate the payment terms However, the letter from Kenneth W Delcour of Blue Valley Printing Co,<sup>2</sup> concluded with the statement that "[i]f you need any other information, please call me".<sup>2</sup>

At no time during the campaign did Mr Lally make a request to the Local Union to mail campaign literature, see *Rules*, Article VIII, § 6 (c) Mr. Lally never contacted the Local Union, the mail house identified by the Local Union, the Election Officer or the Election Office Regional Coordinator regarding the procedures for a mailing, including the terms of payment for these services

During the course of the investigation of this protest, Mr Lally stated to the Election Office investigator that while his slate had discussed mailing campaign literature, they decided that they would only send out a mailing in response to a mailing by the Vincent slate In addition, Mr Lally stated that he was waiting for the final resolution of various pre-election protests filed with the Election Officer so that he could

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<sup>1</sup>. The member of the "Teamsters Local 783 slate" receiving the smallest number of votes was Ron Abshire who received 538 votes. The member of the "New United Teamsters Local 783 Slate" who received the greatest number of votes was Nancy Walsh who received 497 votes; a difference of 41 votes. A total of 1008 ballots were counted.

<sup>2</sup>Mr Delcour was contacted by the Election Office during the course of the investigation regarding the payment term under his January 8, 1991 bid for mailing services Mr Delcour stated that the terms were not discussed with Mr Vincent at the time the bid was made However, Delcour stated that he would accept 30 to 90 day payment terms under the bid

Kevin Lally  
Page 3

use the protests in his campaign literature Mr Lally did not attempt to raise funds for a mailing at any time during the campaign

During the weekend of January 12-13, 1991, Lally became aware that the Vincent slate was preparing a campaign mailing at the Local Union hall The mailing was sent out on January 14, 1991, the same day that the ballots were mailed The Vincent mailing would not have been received by Lally or any member of his slate before January 15, 1991

During a general membership meeting on January 16, 1991, the issue of the Vincent slate mailing was raised Mr. Vincent stated that his slate had sent out a mailing and that he would be billed for the costs of the mailing by the Local Union<sup>3</sup> Mr Vincent stated that he had not paid for the mailing in advance or at the time the material was mailed Neither Mr Lally, nor his slate, requested the opportunity to distribute a mailing on the same terms as the Vincent slate

Mr Lally alleged in his protest that Mr. Vincent brought two shop stewards, Wanda L Berkley and Pearl Breeden, into the Local Union hall to work on the campaign mailing The Election Officer's investigation revealed that both Ms Berkley and Ms Breeden were in the Local Union office after the end of their work shifts on January 9 and 10, 1991 Ms Berkley and Ms Breeden were on unpaid Union leave from their regular work shift on January 11, 1991 The setting up for the campaign mailing did not begin until after the end of their regular work shift on January 11

Mr Lally also alleged that an item of the campaign literature distributed by the Vincent slate was printed on official Union stationery The item in question is a reproduction of a letter, dated March 30, 1990, from Mr Vincent to Mr Lally regarding the payment of lost time while Mr Lally was allegedly on vacation. The original letter was printed on official union stationery The Vincent slate reproduced the March 30 letter for use as a piece of campaign literature When it did so, it was copied onto "Teamsters Local 783 Slate" campaign stationery At the bottom of the campaign literature was the printed statement "Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Buy Union-Made Products " This statement appears at the bottom of the Local Union 783 official stationery

Because the instant protest was deferred, pursuant to Article XI, § 1(a)(4)(b) of the Election *Rules*, the Election Officer must consider not only whether there was a violation of the Election *Rules* but whether that violation "affected the outcome of the election " Article XI, § 1(b)(2) In this case, the Election Officer finds that two of the three claims do not constitute violations of the *Rules*, while the third claim advanced by

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<sup>3</sup>The Vincent slate did pay for the Local Union for postage and the costs of labels by check dated January 24, 1991 The bills for the printing and other costs were not due and payable until 30 to 90 days after delivery of the material.

Kevin Lally  
Page 4

Mr Lally, even if a violation of the *Rules*, would not have affected the outcome of the election

Based upon his investigation, the Election Officer concluded that Mr Lally's allegations concerning the use of Union stewards, equipment and official Union stationery for campaign purposes by the Vincent slate did not constitute violations of the *Rules*. The two Local Union 783 shop stewards were neither paid by the Local Union, or on Union leave, when engaged in campaign activity. The use of Union equipment for the campaign mailing was available to Lally as evidenced in by the December notice and as reiterated at the January membership meeting. Finally, the photocopy of the text from the bottom of the Local Union's stationery did not constitute the prohibited use of the Union's official stationery. The letter was clearly a piece of campaign literature printed on the letterhead of the campaign and not on the letterhead of the Local Union. Thus, these portions of the protest must be DENIED.

The final alleged violation in the protest concerns the fact that the Local Union did not charge the Vincent slate for the cost of their campaign mailing in advance, or at the time, of the mailing. The sections of the *Rules* governing candidate mailings provide that "when the Union authorizes distribution of campaign literature on behalf of any candidate, similar distribution under the same conditions and costs shall be made for any other candidate, if requested," *Rules*, Article VIII, § 6 (a)(1)(b). The *Rules* also require that "the Union need not distribute any candidate's campaign literature if that candidate is not able or willing to pay for the reasonable costs of such distribution," *Rules*, Article VIII, § 6 (a)(1)(c). However, while the *Rules* recognize that a candidate is responsible for the reasonable costs of distribution of campaign literature, the *Rules* do not require that the candidate pay in advance or at the time of distribution. The *Rules* also provide that

Union funds, facilities, equipment, stationery, etc may not be used to assist in campaigning unless the candidate reimburses the Union for such costs and such goods and services are equally available to all candidates and all candidates are notified in advance of the availability of such goods and services

*Rules*, Article VIII, Section 10(c).

The policy of Local Union 783 not to bill candidates for the costs associated with campaign mailing in advance, or at the time of the mailing, is not violative of the *Rules*. Local Union 783's policy, as explained at the January membership meeting,<sup>4</sup> was to bill

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<sup>4</sup>The Local Union alleged during the course of the investigation that Mr Lally and his slate were aware of the Local Union policy as early as the December, 1990 membership meeting. Mr Lally denies that the Local Union made other candidates aware of such a policy in December, 1990. In light of the other facts of this case and the legal standard of the *Rules* on affecting the outcome of the election, the Election Officer determined that it was unnecessary to resolve this factual dispute.

the candidates after the service was preformed. The Election Officer determined that the expenses incurred by the Local Union for the Vincent slate mailing, i e , postage and labels, were reimbursed by the slate. Therefore, the Election Officer finds no violation resulting from the Local Union's expense reimbursement policy. Similarly, there was no evidence presented that the policy would not have been available to Mr Lally and his slate if he had requested a mailing. Therefore, the Election Officer does not find that the Local Union reimbursement policy was implemented in a discriminatory manner.

However, the *Rules* require that when Union funds or facilities are used for campaign purposes, all candidates must be made aware of their availability in advance. In this case, Mr Lally was only made aware of the Local Union's reimbursement policy after the completion of the Vincent slate mailing. Thus, he contends that this lack of prior notice to all candidates is violative of the *Rules*. Even assuming, however, that there was lack of prior notice, and thus a violation of the *Rules*, the violation had no impact upon Mr Lally or his fellow slate members.

Mr Lally and his slate had no plans to do a campaign mailing until after the receipt of the Vincent mailing. Lally made no inquiries to the Local Union, the mail house or the Election Office Regional Coordinator regarding mailing procedures, the costs of a mailing and the terms for payment of these costs. Lally took no steps to prepare for a mailing, including the raising of funds.

Lally's decision to do a mailing was allegedly made sometime after the receipt of the Vincent mailing on or about January 15, 1991. Lally learned all the details of the Vincent mailing at the Local Union membership meeting on January 16, including the fact that mailings could be made without advance payment.

Rather than send out his own mailing through the Local Union on the same terms afforded to the Vincent slate or through the mail house, Lally took no action other than filing the instant protest. Since Lally had no intention to do a mailing except in response to a Vincent mailing, Lally had no intention to do a mailing before January 14, the date of Vincent's mailing; Lally chose not to do one after the membership meeting on January 16. The Local Union's alleged failure to notify Lally and his slate of its reimbursement policy before the Vincent slate mailing clearly had no impact on the Lally slate's decision not to do a mailing. Moreover, once the Lally slate was informed of the policy they chose not to avail themselves of it or to send out a mailing through the mail house.

The alleged *Rules* violation had no effect on Mr Lally or his slate, neither he nor they did anything or failed to take action because of the alleged failure of the Union to notify them earlier that the costs of mailing did not have to be paid in advance. Since the violation of the *Rules* did not affect their conduct or campaign activities, or lack of activity, such violation could not have affected the election. Since a protest determined post-election will only be granted if the violation may have affected the outcome of the election, *Rules*, Article XI, § 1 (b)(2), this protest must be DENIED.

Kevin Lally  
Page 6

For the reasons set forth above, the instant protest must be DENIED in its entirety

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) 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/mca

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

RECEIVED  
MAR 13 1991

783/SCE

IN RE:

KEVIN LALLY,

Complainant,

and

JERRY VINCENT  
IBT LOCAL UNION NO. 783,

Respondents.

91 - Elec. App. - 91 (SA)

DECISION OF THE  
INDEPENDENT  
ADMINISTRATOR

X MHH  
BJH  
JS

This matter arises out of an appeal from a March 1, 1991, decision of the Election Officer in Case No. ~~XXXXXXXXXX~~. A hearing was held before me by way of teleconference on March 8, 1991, at which the following persons were heard: Barbara Hillman, on behalf of the Election Officer; Peggy Hillman, the Regional Coordinator; Kevin Lally, the complainant; and Jerry Vincent, the Secretary-Treasurer of Local 783.

Mr. Lally is a member of Local 783 and a candidate for delegate to the 1991 IBT International Convention as a member of a "New United Teamsters Local 783 Slate." He charges that Mr. Vincent and his slate of candidates known as the "Teamsters Local 783 Slate" violated the Rules For The IBT International Union Delegate And Office Election (the "Election Rules") by: (1) using Union funds, equipment and personnel on Union time for campaign-related purposes; (2) using the text at the bottom of the Union's letterhead stationery on its campaign material; and (3) using more



favorable payment terms for its campaign mailing than were offered to other candidates.

#### USE OF UNION EQUIPMENT AND PERSONNEL FOR CAMPAIGN MAILING

Mr. Lally alleged that on January 11, Mr. Vincent used the services of two Union shop stewards to complete a campaign mailing on Union time. Mr. Lally also charged Mr. Vincent with using the Local Union offices and equipment to accomplish this campaign mailing. The Election Officer's investigation disclosed that the campaign activity did not begin until after the end of the shop steward's regular work shift on January 11. Mr. Lally did not offer anything to contradict this finding.

As stated by the Election Officers in his Summary, because the shop stewards were not paid by the Union when they participated in the "campaign activity, there was no violation in utilizing their voluntary services or for them, during their own time, to perform the various tasks associated with the mailing of Mr. Vincent's campaign literature." See Election Rules, Article VIII, Section 6.h.

Accordingly, the Election Officer's denial of this aspect of Mr. Vincent's protest is affirmed.

#### USE OF UNION'S STATIONERY

The facts underlying this aspect of Mr. Lally's protest are described in the Election Officer Summary as follows:

Mr. Lally also protested that Mr. Vincent's slate printed an item of campaign literature on official Union

stationery. More specifically, the incident concerned a letter written by Mr. Vincent, in his capacity as Secretary-Treasurer, to Mr. Lally on March 30, 1990, to notify him that he was expected to return to the Union some \$80 he allegedly should not have received. For campaign purposes, Mr. Vincent reprinted the text of that letter on his own campaign stationery, but left at the bottom of the document was the notation that appears at the bottom of the official stationery:

**"Affiliated with the International Brotherhood of Teamsters,  
Chauffeurs, Warehousemen and Helpers of America**

**' Buy Union-Made Products"**

While the Election Rules prohibit the use of Union stationery for campaign purposes, regardless of whether or not the candidate pays for the cost (Election Rules, Article X, Section 1.b.(3)), Mr. Vincent's slate did not use the Union stationery; it only copied the text cutting off the top portion of the Stationary which included the Local's masthead and the names of the Local Union Officers. The bottom of the Union stationery was, however, copied onto the campaign literature. As concluded by the Election Officer, "this isolated and limited use of the Union's boilerplate text, which contained neither the Local's name or number, nor any official logo or insignia, without more, does not violate the Election Rules."

Accordingly, the Election Officer's denial of this portion of Mr. Lally's protest is affirmed.

#### **PAYMENT TERMS FOR MR. VINCENT'S CAMPAIGN MAILING**

Mr. Lally also alleged that by making a membership mailing without having to pay the cost, at or before the time of the mailing, Mr. Vincent availed himself of more advantageous terms for

mailing his campaign literature than offered or known to other candidates. The only issue here is that of deferred payment; it is not disputed that Mr. Vincent reimbursed the Local Union for the expenses involved shortly after the mailing.

Article VIII, Section 6.a.(1) of the Election Rules provides that candidates shall be permitted "a reasonable opportunity, equal to that of any other candidate" to have campaign material distributed to the membership of a Local Union by the Local, as long as the candidate pays for the associated expenses. It is further specified that "the same conditions and costs" of a distribution of campaign literature for any candidate must be made available to any other candidate, "if requested." The Election Rules also provide that if a Union makes its goods and services available for campaign purposes, such goods and services must be made equally available to all candidates, and all candidates must be notified in advance of such availability. See Election Rules, Article VIII, Section 10.c.

While the Election Rules require that candidates pay for the reasonable cost of distribution of literature made through the Union, the Rules do not specify that such payment must be made at or before the time of the distribution. The deferred reimbursement policy of Local 783 does not, on its face, violate the Election Rules. As further stated by the Election Officer in his summary:

Nor does the evidence establish that the policy was made available to only certain candidates on a discriminatory basis. The policy was not tested as to Mr. Lally because he never requested the Local Union to distribute his literature on a deferred payment basis. In fact, Mr. Lally indicated during the investigation of

the protest that he did not intend to make a mailing unless or until Mr. Vincent's slate made one. Consistent with that position, he took no steps -- such as raising funds, seeking information or preparing materials -- towards the distribution of campaign material. There is simply no evidence that the Local would have refused such a request had he made it.

Mr. Lally contends that he did not know that such deferred payment terms were available until the mailing by Mr. Vincent was discussed at a January 16 general membership meeting. Local 783 disputes this, stating that Mr. Lally knew or should have known about this policy in December of 1990. The Election Officer did not find it necessary to resolve this particular factual dispute, because even if Mr. Lally did not know about the deferred payment policy until January 16, the violation of the Election Rules that he alleges, according to the Election Officer, did not have any effect on the outcome of the election. Here, it is important to remember that the Election Officer treated Mr. Lally's protest as post-election protest. See Election Rules, Article XI, Section 1.a.(4)(b) As is true of all post-election protests, the challenged conduct will only be remedied if it "may have affected the outcome of the election." See Election Rules, Article XI, Section 1.b. In concluding that the outcome of the election here would not have been affected, the Election Officer notes that:

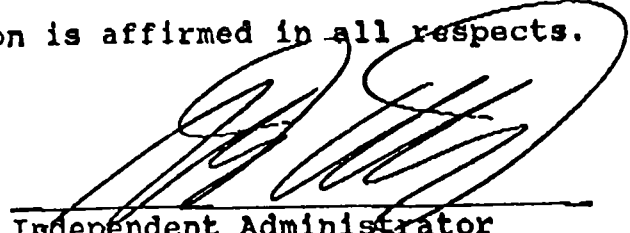
In sum, it cannot be said that the violation of the Rules alleged -- that Mr. Vincent was afforded deferred payment terms without prior notice to Mr. Lally of the availability of such terms -- accounted for Mr. Lally's decision not to distribute literature through a mailing. To the contrary, Mr. Lally's decision about a mailing was made irrespective of the payment terms involved and based

on entirely different considerations.<sup>1</sup> If the payment terms had been the determinative factor, Mr. Lally would have made a mailing after January 16, when there was no question that he knew such terms were available. The violation did not cause Mr. Lally not to send out a mailing; a fortiori the violation could not have caused the effect on the outcome of the election that is necessary to upset it.

Accordingly, the Election Officer's decision regarding this aspect of Mr. Lally's protest is also affirmed.

#### CONCLUSION

The Election Officer's decision is affirmed in all respects.



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

Dated: March 12, 1991.

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<sup>1</sup> Mr. Lally's stated intention was to wait until Mr. Vincent distributed literature before undertaking his own mailing.