



OFFICE OF THE ELECTION OFFICER  
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
25 Louisiana Avenue, NW  
Washington, DC 20001  
(202) 624 8778  
1 800 828 6496  
Fax (202) 624 8792

Michael H Holland  
Election Officer

Chicago Office  
% Cornfield and Feldman  
343 South Dearborn Street  
Chicago, IL 60604  
(312) 922 2800

March 8, 1991

**VIA UPS OVERNIGHT**

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

Robert Marciel  
Secretary-Treasurer  
IBT Local Union 63  
1616 West Ninth Street  
Room 205  
Los Angeles, California 90015  
(and via Facsimile)

**Re: Election Office Case No. P-564-LU63-CLA**

Gentlemen

A pre-election protest was timely filed pursuant to Article XI, Section 1 of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("*Rules*") In his protest, Gerald Moerler alleges that the work-site list furnished him by Local 63 is incomplete and contains incorrect addresses.

Mr Moerler filed an earlier protest alleging that Local 63 had failed to meet its obligation under the *Rules* because the work-site list it provided him contained a substantial number of Post Office Box addresses and corporate headquarters addresses, rather than addresses of the job sites where Local 63 members worked Subsequent to the filing of that protest, the Local agreed to furnish a work-site list with accurate job site addresses by January 5, 1991 Such a list was furnished on January 2, 1991 The Election Officer's representative reviewed the list and determined that all employers were identified by job-site address, rather than by Post Office Box or by the address of the corporate headquarters The Election Officer, however, issued a decision, granting the protest and directing the Local to post a Notice because of the time lapse involved between Moerler's request for the list and the Local's furnishing of an appropriate list, that is a list containing the actual work-site addresses See P-123-LU63-CLA and P-127-LU63-CLA

On February 25, Mr Moerler again protested with respect to the work-site list On February 28, 1991, the Local responded to Mr Moerler's protest by letter and amended the prior list by correcting the spelling of certain company names, correcting some work-site addresses, and adding a few new work-site locations

Mr Moerler continued to maintain that the list remained incorrect and incomplete. The Election Officer commenced his own investigation to determine the validity of Mr Moerler's contentions. The TITAN records for Local 63 were reviewed by the Election Office. This review disclosed that there are approximately one hundred (100) employers, employing 978 members of Local 63, whose work-site addresses were not contained on the list of January 2, 1991 or the amended list of February 28, 1991.

The Election Officer concludes that Local Union 63's failure to include the work-site addresses of approximately one hundred employers employing 978 members of Local 63 -- whether purposeful or inadvertent -- frustrated Mr Moerler's rights under Article VIII, Section 1 of the *Rules*. The purpose of Article VIII, Section 1 of the *Rules* is to afford candidates an important campaign right -- the right to know the employer locations where members work. The *Rules* recognize that the most effective means of campaigning is face to face exchanges between IBT members regarding the candidates and issues of the campaign. Thus, the *Rules* are designed to allow candidates access to the membership by obtaining job site locations of employers where members work, in order that such candidates can engage in such meaningful face to face campaign activity. If the information is not given, or if incomplete information is conveyed, the opportunity to campaign is substantially reduced.

The ballots in this Local will be mailed on March 8, 1991. Clearly now providing Mr Moerler with the addresses of the employers whose work-site locations were omitted from the prior work-site lists given him would not enable Mr. Moerler an adequate opportunity to campaign at such work-sites prior to the time that most Local 63 members will have returned their voted ballot.

The *Rules* have been violated, the protest is GRANTED. To remedy the violation, and to provide Mr Moerler campaign access to the Local 63 members employed by those employers whose names and work-site addresses were omitted from the prior work-site lists, the Election Officer directs the following:

- 1 The Local shall furnish Mr Moerler a revised work-site list within twenty-four hours of receipt of this decision.
- 2 Gerald Moerler and the slate of candidates with whom he is affiliated shall be afforded a campaign mailing, of reasonable size and length, to all Local Union members employed by those employers whose names and addresses were omitted from the January 2, 1991 and February 28, 1991 work-site lists. The literature shall be delivered to Regional Coordinator, Geraldine L. Leshin, who will supervise the mailing of the literature.<sup>1</sup> The Local is directed

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<sup>1</sup>The mailing will be processed within 48 hours, excluding Sundays and holidays, of receipt of the literature by the Regional Coordinator.

Gerald Moerler  
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to pay the Election Office for the printing and mailing costs associated with the mailing

3. Any appeal of this Determination shall not stay this Order See Article XI, Section (a)(8) of the *Rules*.

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  
Geraldine L Leshin, Regional Coordinator (via Facsimile)

IN RE:	:	91 - Elec. App. - 102 (SA)
GERALD MOERLER	:	:
and	:	DECISION OF THE
ROBERT MARCIEL	:	INDEPENDENT ADMINISTRATOR
IBT LOCAL UNION NO. 63	:	:

This matter arises out of an appeal from a decision of the Election Officer dated March 8, 1991, in Case No. P-564-LU63-CLA. A hearing was held before me by way of telephone conference on March 15, 1991, at which the following persons were heard: Robert Vogel, an attorney on behalf of Local 63; Bob Aquino, President of Local 63; the complainant, Gerald Moerler; John J. Sullivan, on behalf of the Election Officer; and Gerry Fellman, the Adjunct Regional Coordinator.

Article VIII, Section 1.a. of the Rules For The IBT International Union Delegate And Officer Election (the "Election Rules") provides each delegate candidate the right to inspect and make notes from all collective bargaining agreements covering any members of the Local Union the candidate seeks to represent at the 1991 IBT International Convention. Article VIII, Section 1.c. of the Election Rules further provides that the Local Union may, in the alternative, provide a delegate candidate a list of all work

sites at which members are employed along with addresses. As stated by the Election Officer in his Summary:

The purpose of both subsections is the same: to ensure that candidates are informed as to where the members they seek to represent are working. The Election Rules recognize that the most effective means of campaigning is personal exchange between IBT members regarding the issues of the campaign and the candidates who are running. Thus, the Election Rules are designed to allow candidates access to the membership by ensuring that candidates are provided job site locations where members work. That information enables such candidates to engage in meaningful campaign activity. If the information as to where the IBT members work is not provided, or if it is provided in incomplete, inaccurate or untimely fashion, the right to campaign is truncated.

Mr. Moerler, a member of Local 63 and a candidate for delegate to the 1991 IBT International Convention, has maintained a continuing objection to the work site list furnished him by Local 63. Mr. Moerler claims that the list is incomplete and inaccurate. In the past, the Election Officer has addressed protest of Mr. Moerler concerning the work site list. None of these protests were appealed to the Independent Administrator.

The instant appeal arises out of a protest filed by Mr. Moerler on February 25, 1991. In this protest, as in the others filed by Mr. Moerler, he objected to the work site list as incomplete and inaccurate. On February 28, the Local, in response to this protest, amended its prior list by providing correct spellings and addresses of some job sites and by adding a few work site locations that had previously been omitted from the list. Mr. Moerler, however, still maintained that the list was incomplete and inaccurate. The Election Officer reviewed the list supplied by

Local 63 and concluded that it was indeed defective. The Election Officer concluded that Local 63's failure to provide an accurate and complete work site list, whether "purposeful or inadvertent" violated the Election Rules. As stated by the Election Officer in his March 8, 1991, opinion:

The purpose of Article VIII, Section 1 of the Rules is to afford candidates an important campaign right: the right to know the employer locations where members work. The Rules recognize that the most effective means of campaigning is face-to-face exchanges between IBT members regarding the candidates in issues of the campaign. Thus, the Rules are designed to allow candidates access to the membership by obtaining job site locations of employers where members work, in order that such candidates can engage in such meaningful face-to-face campaign activity. If the information is not given, or if incomplete information is conveyed, the opportunity to campaign is substantially reduced.

Local 63's ballots were to be mailed to its members on March 8, 1991, the date of the Election Officer's decision. The Election Officer recognized that providing Mr. Moerler with an accurate and complete work site list, following the mailing of the ballots, would not give Mr. Moerler an adequate opportunity to campaign at such work sites prior to the time that most Local 63 members would have returned their ballots. Thus, the Election Officer ordered an alternate remedy. The Election Officer first directed that the Local furnish Mr. Moerler a revised work site list within 24 hours of its receipt of the decision.<sup>1</sup> Second, the Election Officer afforded Mr. Moerler, and the slate of candidates with whom he is

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<sup>1</sup> The instant appeal does not address this portion of the remedy.

affiliated, a campaign mailing to all Local Union members employed by those employers whose names and addresses were omitted from the work site list supplied to Mr. Moerler by the Local. The initial cost of the mailing was borne by the Election Office. The Local was directed to reimburse the Election Office for the printing and mailing cost associated with the mailing. The Local has yet to do so, electing instead to file this appeal.

At the hearing before me, the Local defended its actions. It stated that it had attempted, in good faith, to supply an accurate list, but given the size of the Local and the number of employers involved, there were admittedly some errors in the list provided. The Local emphasized that it was, and is, willing to cooperate with Mr. Moerler and the Election Officer to satisfy Mr. Moerler's concerns. In addition, the Local argues that the list supplied to Mr. Moerler was indeed more accurate than the Election Officer's review suggests, and thus, the mailing ordered by the Election Officer is overbroad.

While the Local may have acted in good faith and, indeed, may have attempted to provide Mr. Moerler with a complete and accurate work site list, the fact remains that it did not. This is all that needs to be decided here. Not having provided Mr. Moerler with a comprehensive work site list, the Local prevented Mr. Moerler from effectively campaigning. Thus, the Election Officer's remedy is proper.



In short, the Local had an absolute duty to provide a complete and accurate work site list to Mr. Moerler. The Local breached that duty and, thus, must cure that breach. The limited mailing ordered by the Election Officer is reasonable and proper and the Local must bear the cost of that mailing regardless of its stated good intentions and efforts.

The Local suggests that the mailing is overbroad because it entitles Mr. Moerler to reach not only members of employers who may not have been included in the list, but in fact it permits Mr. Moerler to reach both members of employers who were indeed included in the list as well as members who work for employers without collective bargaining agreements with Local 63. The Local, however, did not share much of the information that it presented at the hearing with the Election Officer while the Election Officer was investigating this protest. In fact, during the week preceding the Election Officer's ruling, a representative from his office attempted to contact the Local to discuss the Election Officer's concerns in greater detail.<sup>2</sup> The Local did not, however, return the calls of the Election Officer's representative.<sup>3</sup> Faced with the impending deadline for the mailing of the ballots, the Election

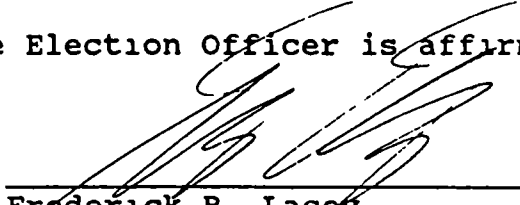
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<sup>2</sup> Some correspondence was exchanged between Local 63 and the Election Officer and his Adjunct Regional Coordinator on or about February 27-28, 1991.

<sup>3</sup> The Local suggests that it never received any calls from the Election Officer's representative the week before the March 8, 1991, ruling issued. In resolving this factual dispute, I credit the Election Officer's representation that his representative attempted to contact the Local the week prior to his decision.

Officer, relying on his own analysis of the work site list, fashioned a remedy that he deemed appropriate. That the mailing ordered by the Election Officer may, in light of the position taken by the Local at the hearing before me, be over inclusive, does not ease the Local's responsibility here. The Local cannot hide behind its failure to address all of the Election Officer's concerns in a timely fashion.

Accordingly, the ruling of the Election Officer is affirmed.



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

Dated: March 19, 1991