

OFFICE OF THE ELECTION OFFICER
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS
25 Louisiana Avenue, NW
Washington, DC 20001

Michael H. Holland
Election Officer

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April 19, 1991

VIA UPS OVERNIGHT

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

Robert Marciel
Secretary-Treasurer
IBT Local Union 63
1616 W. Ninth St.
Room 205
Los Angeles, CA 90015

Vons Grocery Co
4344 Shirley Ave
El Monte, CA 91731

Re: Election Office Case No. P-713-LU63-CLA

Gentlemen:

A protest has been filed pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules")¹. In his protest, Gerald Moerler, an elected delegate to the 1991 IBT International Convention, alleges that the *Rules* have been violated because Robert Marciel, Secretary-Treasurer for Local 63, displayed a rifle at a Local 63 union meeting.

The investigation discloses the following facts: On March 17, 1991, Local 63 conducted a general membership meeting at its union hall in Montebello, California. Following the general membership meeting, a special meeting was conducted for IBT members employed by Vons to discuss some problems particular to their employment situation. The general membership meeting started at 10:00 am, the Vons meeting concluded at 12:00 pm (noon).

Following the meeting, Robert Marciel was observed in the parking lot by Moerler displaying a rifle which Moerler describes as a "high powered weapon". Other IBT members were also in the parking lot at the time. Moerler believes the display of

¹Local 63 has concluded its delegate elections. The protest does not allege and the Election Officer does not find that the conduct alleged in this protest affected the outcome of the election.

Gerald Moerler
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the rifle was an act of intimidation against him and the IBT members who are supporters of Ron Carey.

Robert Marciel was interviewed by Adjunct Coordinator Gerry Fellman. Marciel said that he collects guns and that he also hunts for sport. He did, in fact, bring a newly purchased rifle to the Local 63 meeting to show it to some IBT members who hunt with him and share his interest in rifles

Marciel purchased the rifle in Barstow, California toward the end of February. It is a Browning 1885 single shot rifle with a falling block. The exterior of the barrel is hexagon shaped; the rifle contains a distant scope. Marciel was accompanied by Dallas Wimer, a Local 63 employee, when he went to purchase the rifle. Wimer also hunts and collects guns. Because there is a 15 day waiting period in California following the purchase of a gun, Marciel did not obtain the rifle until shortly before the March 17, 1991 membership meeting.

Wimer and Marciel both state that Wimer asked Marciel to bring the rifle to the Local 63 meeting so he could see it. The rifle was in a case in the trunk of Marciel's car. After the Vons meeting, Marciel showed several other interested members the rifle. The rifle was not loaded. Marciel stated that his only purpose in bringing the rifle was to show it to other IBT members who share his interest in guns.² The Election Officer concludes that Marciel's display of the gun was not intended to intimidate any IBT member at the membership meeting.

However, because there is a history of intra-Union violence in this Local, the carrying of any weapon to a Local Union meeting for any purpose is not conducive to the orderly functioning of the election process and could tend to discourage members from participating in the process. Given the previous history, Local 63 members could reasonably be concerned regardless of the intent or purpose of the member having the rifle.

Therefore, the Election Officer orders that all IBT members of Local 63 are prohibited from carrying weapons of any type on their person or in their vehicle to any Local Union function. To insure that all members are aware of this prohibition, Local 63 is directed to copy and distribute the attached letter by mail to all Local 63 members informing them that members will be prohibited from carrying weapons of any type on their person or in their car to any Local Union function. An affidavit should be filed with this office no later than April 20, 1991, indicating that the letter has been mailed. Failure of any member to comply with this order will result in appropriate action by the Election Officer under the *Rules*.

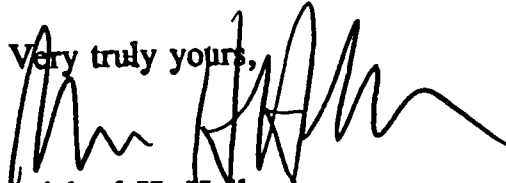
If any interested party is not satisfied with this determination, they may request a hearing before the Independent Administrator within twenty-four (24) hours of their

²Wimer told Fellman that the staff of Local 63 had previously presented Marciel with a rifle as a Christmas present.

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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/mjv

cc. Frederick B Lacey, Independent Administrator
Geraldine L Leshin, Regional Coordinator

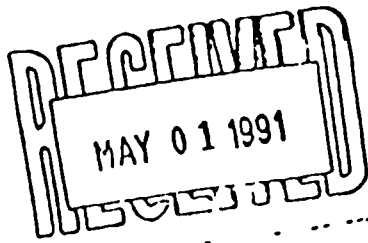
To All Local 63 Members:

The Election Officer has issued an order (P-713-LU63-CLA) prohibiting any Local 63 member from carrying weapons of any type on their person or in their vehicle to any Local Union function. Should any member fail to comply with this directive from the Election Officer, appropriate action will be taken under the Election *Rules*.

This directive to Local 63 members from the Election Officer is fully supported by the Executive Board of Local 63, and we will monitor closely compliance with this order.

ROBERT MARCIEL

Secretary-Treasurer of Local Union 63



63/CLA XMHH
BJH
JS

IN RE:

GERALD MOERLER

and

ROBERT MARCIEL

and

IBT LOCAL UNION NO. 63

91 - Elec. App. - 140 (SA)

DECISION OF THE
INDEPENDENT
ADMINISTRATOR

This matter arises out of an appeal from an April 19, 1991, Decision of the Election Officer in Case No. P-713-LU63-CLA. A hearing was held before me by way of telephone conference on April 29, 1991, at which the following persons were heard: the complainant, Gerald Moerler; Robert Vogel, an attorney on behalf of Local Union 63; Geraldine Leshin, the Regional Coordinator; and John J. Sullivan, on behalf of the Election Officer.

In his protest, Mr. Moerler alleges that the Secretary-Treasurer of Local 63, Robert Marciel, violated the Rules for the IBT International Union Delegate and Officer Election (the "Election Rules") by displaying a rifle in the parking lot of the Local's Union Hall after a Union meeting on March 17, 1991. Mr. Moerler contends that Mr. Marciel publicly exhibited the rifle to intimidate and threaten Mr. Moerler and other supporters of Ron Carey, a candidate for IBT General President. Mr. Marciel admits

that he displayed the rifle, but he defends his action by stating that he was merely showing off the newly-purchased rifle to other members of the Local who shared his interest in firearms and hunting. The rifle was not loaded at the time.

The Election Officer's conclusion is explained in his Summary as follows:

On examination of the facts, the Election Officer does not find that Mr. Marciel's intent in bringing the rifle to the union meeting was to intimidate or threaten Mr. Moerler. However, the Election Officer does find that Mr. Marciel's action in displaying a weapon after the union meeting could reasonably have had that effect on his political opponents.

The Election Officer was particularly sensitive to a 1985 incident that occurred during a Local Union officer election. Mr. Marciel was also the Secretary-Treasurer at the time and a candidate in the election. Approximately nine dissident members who were opposing the incumbents in the election were brutally assaulted before a union meeting. A federal jury subsequently ordered the Local to pay over \$750,000 to the members injured in the attack. The Election Officer thus concluded that:

Accordingly while the Election Officer did not find that Mr. Marciel acted from improper intent, the Election Officer determined that weapons should not be brought to union meetings or displayed after union meetings and granted the protest to that extent.

As a remedy the Election Officer directed the Local to mail a notice to all Local 63 members, at its own expense, informing them of the Election Officer's prohibition on any Local 63 member from carrying weapons of any type on their person or in their vehicle to

any Local Union function. The Election Officer further directed that the notice be signed by Mr. Marciel as Secretary-Treasurer.

The Local raises several objections to the Election Officer's remedy. First, the Local argues that the remedy strongly implies that a violation of the Election Rules has occurred, when in fact the Election Officer has found no such violation. A review of the notice in question (a copy of which is attached) leaves no such impression. It in no way suggests that any one, let alone the Secretary-Treasurer, violated the Election Rules.

Relying on a broader argument, the Local suggests that the Election Officer has no jurisdiction to impose a remedy where there is no violation of the Election Rules. In a similar connection, Local 63 argues that the Election Officer can not saddle it with the cost of the mailing given that there is no finding that the Local has committed any wrong.

In making these arguments, the Local ignores Article XI, Section 2 of the Election Rules which provides, in pertinent part, as follows:

If as a result of any protest filed or any investigation undertaken by the Election Officer with or without a protest, the Election Officer determines that these rules have been violated or that any other conduct has occurred which may prevent or has prevented a fair, honest and open election, the Election Officer may take whatever remedial action is appropriate. [Emphasis supplied]

In this case, although the Election Officer did not find a violation of the Election Rules, he determined that the presence of

firearms in or around Local Union functions would have a clear chilling effect on the rights of the Local membership to participate in the election process. Having made this finding, the Election Officer acted within his authority to order the mailing of the notice in an attempt to prevent such a chilling effect from taking hold.

The Local also suggests that the Election Officer does not have the authority to prohibit activity at "any Local Union function." The Local argues that the Election Officer's authority is limited to the nomination and election of delegates to the International Convention, and the subsequent nomination and election of International Officers. The Local incorrectly limits the Election Officer's jurisdiction.

The Election Officer has "the authority to take all necessary actions in supervising the election process in order to insure fair, honest and open elections." Election Rules, preamble at p.2. The election process is not limited to the actual nomination and election of delegates and International officers. It is clear that the election process encompasses a much wider range of activity. Local Union functions are a natural venue for members and candidates to meet and exchange views and ideas, whether on a formal or informal basis. Under these circumstances the presence of firearms at or around such functions can only serve to intimidate and chill the free and open exchange of political views.

Given all this, the Election Officer clearly has the authority to prohibit firearms at or around such functions.

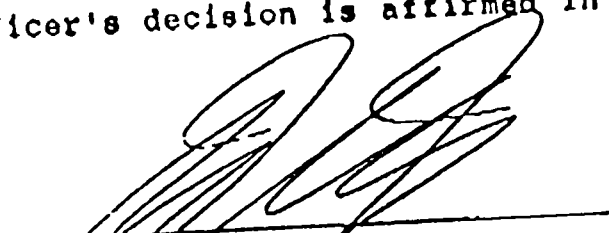
Lastly, the Local takes exception to the suggestion that it has a history of violence. The Local acknowledges the 1985 incident during which the members were assaulted. However, in an apparent attempt to mitigate the incident, the Local states that only one member suffered any serious injury.¹ It also states that Mr. Marciel was absolved of any wrongdoing by the jury. The jury's verdict was directed against Local 63 and was limited to a finding that the Local had violated certain provisions of the Labor Management Reporting And Disclosure Act. The Local also notes that the jury's verdict is currently on appeal before the Ninth Circuit Court of Appeals. Still further, the Local states that there was no violence at any Local 63 meeting before the 1985 incident, nor has there been any since.

The Local does not dispute, however, that in fact in 1985, approximately nine members of the Local were violently attacked and beaten. It also does not dispute that that attack appeared to be politically motivated. The attackers wore pro-Marciel t-shirts. Despite the Local's suggestion to the contrary, it is clear that the attack has had a lingering effect on the members of the Local as evidenced by the instant protest of Mr. Moerler. Against the

¹ That member suffered a collapsed lung and was hospitalized for three weeks.

backdrop of this 1985 incident, the Election Officer's decision is all the more proper.

Accordingly, the Election Officer's decision is affirmed in all respects.



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

Dated: May 1, 1991

OFFICE OF THE ELECTION OFFICER
INTERNATIONAL BROTHERHOOD OF TEAMSTERS
25 Louisiana Avenue NW
Washington DC 20001

Richard H. Holland
Election Officer

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May 30, 1991

VIA UPS OVERNIGHT MAIL

Gerald Moerler
13104 Glen Court No 40
Chino Hills, CA 91709

Robert Marciel
Secretary-Treasurer
IBT Local Union 63
1616 W Ninth Street
Room 205
Los Angeles, CA 90015

Re: Election Office Case No. P-713-LU63-CLA,
affirmed 91-Elec App.-140 (Compliance)

Gentlemen

A compliance protest has been filed pursuant to Article XII 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 Local Union has failed to comply with the decision of the Election Officer as affirmed by the Independent Administrator in the above referenced case

The allegations that the Local failed of failure to comply with the Election Officer's decision were investigated by the Los Angeles, California and Washington, D C staff of the Election Officer The investigation discloses the following facts On April 19, 1991, the Election Officer issued a decision in which he prohibited all members of Local 63 from carrying weapons of any type on their persons or in their vehicles to a Local Union function The decision further directed Local 63 to mail a letter to all Local 63 members informing them of the prohibition against weapons The Local appealed the decision and on May 1, 1991, the Independent Administrator affirmed the Election Officer's decision in all respects

Gerald Moerler
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On May 17, 1991, Moerler notified the Election Officer that neither he nor any fellow IBT members known to him had received a copy of the letter that Local 63 has been directed by the Election Officer to mail to all Local 63 members

Local 63 states that it delivered the letter with envelopes to Oxford Argonaut mail house on May 6, 1991, but that on May 10 or May 13, 1991 the mail house notified the Local that the envelopes supplied by the Local were too small to contain the letter. On May 15, 1991, the Local ordered additional envelopes which were supplied to the mail house on May 16, 1991. The mailing was then completed on May 17, 1991. The letter was mailed to the membership via third class postage.

The manager of the mail house was interviewed by the staff of the Election Officer. He informed the Election Officer that he does not have a record of the date he received the mailing order from Local 63, but that he does not believe he would have delayed informing the Local of the problem with the envelopes for some four to seven days after receiving the material. The usual practice is to call the customer the same or the next day with any problem with the order. He believes, therefore, that it is unlikely that the material was received by the mail house on May 6, 1991.

A representative of the entity which printed the larger envelopes was also interviewed. She confirmed that she filled an order for over 11,000 envelopes on May 13, 1991, and that she delivered the envelopes as requested by the Local to Oxford Argonaut on May 16, 1991. Oxford Argonaut states that following the receipt of the new envelopes, the mailing was processed on May 17, 1991.

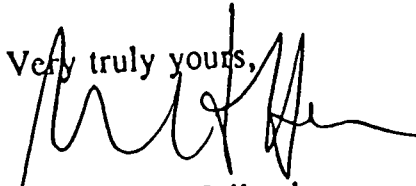
The Election Officer concludes that while the Local has ultimately complied with the decision in the above case, it has engaged in substantial delay in doing so. The Election Officer finds no reason to believe that the mail house delayed notifying the Local of the mail problem for some four to seven days following receipt of the order. Thus, the Election Officer concludes that the letter was not delivered to Oxford for mailing prior to May 10, 1991. But even assuming that the Local in fact delivered the letter to the mail house on May 6, 1991, there is no justification for a five day delay between the issuance of the decision of the Independent Administrator and the date of delivery. Further, the Local waited between two to five days before ordering the necessary new envelopes.

Because of such delay, the members of the Local had not received the letter notifying them of the prohibition by the date of the Local Union meetings scheduled for the weekend of May 18 and 19, 1991. Without such delay, at least some of the members would have had the letter before these scheduled meetings.

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Based on the foregoing, the Election Officer finds that the Local did not properly comply with his previous decision. The Local is therefore ordered to pay the Election Officer the sum of \$300 00 which represents a portion of the costs expended by him investigating and deciding this compliance matter. The sum shall be tendered to the Election Officer no later than ten calendar days from the date of this letter.

Very truly yours,



Michael H. Holland
Election Officer

MHH/pjm

cc Geraldine Leshin, Regional Coordinator
Robert D. Vogel, Esq
Susan Jennik, Esq

IN RE:	:	91 - Elec. App. - 157 (SA)
GERALD MOERLER	:	DECISION OF THE
and	:	INDEPENDENT
ROBERT MARCIEL	:	ADMINISTRATOR
IBT LOCAL UNION NO. 63	:	

This matter arises out of an appeal from a Decision of the Election Officer regarding Local 63's failure to comply with the Election Officer's ruling in Case No. P-713-LU63-CLA, aff'd 91 - Elec. App. - 140 (SA) (May 1, 1991). A hearing was held before me by way of telephone conference on June 5, 1991, at which the following persons were heard: the complainant, Gerald Moerler; Susan Jennik, on behalf of Mr. Moerler; Robert Vogel, on behalf of Local 63; Geraldine Leshin, the Regional Coordinator; and John J. Sullivan, on behalf of the Election Officer.

On April 19, 1991, the Election Officer issued a decision with respect to a protest filed by Mr. Moerler, a member of Local 63. Mr. Moerler had challenged the action of Secretary-Treasurer Marciel in displaying a shotgun in the parking lot of the Union immediately after a Union meeting attended by Mr. Moerler and others. While the Election Officer did not find that Mr. Marciel acted with improper intent, the Election Officer determined that

weapons should not be brought to Union meetings or displayed after Union meetings. The Election Officer granted the protest to that extent. As a remedy, the Election Officer directed the Local to mail a notice to all Local 63 members, at its own expense, informing them of the Election Officer's prohibition on any Local 63 member from carrying weapons of any type on their person or in their vehicle to any Local Union function. The Election Officer further directed that the notice be signed by Mr. Marciel as Secretary-Treasurer. As noted, the Election Officer's decision was affirmed by the Independent Administrator.

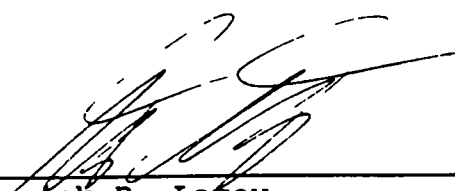
The Local Union unnecessarily delayed the issuance of the notice. Accordingly, the Election Officer found that the Local failed to comply with his order (as affirmed by the Independent Administrator) and he directed the Local to reimburse the Election Officer \$300 towards the costs expended by it in investigating and resolving this compliance matter.

Mr. Moerler appeals from that remedy arguing that Secretary-Treasurer Marciel should be held personally responsible for the costs of the Election Office. In seeking this remedy, Mr. Moerler points to, what he characterizes as, a long history of non-compliance with the Election Rules and disregard of the Election Officer's authority by Mr. Marciel and Local 63. While the history of the Local's compliance with the election process is a troubled one, the Election Officer, in the underlying case, ordered the Local to issue the appropriate notice. Mr. Marciel was not

directed to do anything except sign the notice. Thus, it would be unfair, in this context, to impose the cost on Mr. Marciel for the Local's failure to comply with the Election Officer's remedy.

Moreover, Mr. Moerler's request that Mr. Vogel's attorneys fees in connection with this appeal also be paid by Mr. Marciel is rejected. Clearly, the Local was implicated in the protest and Mr. Vogel properly represented the Local's interest on the appeal.

Accordingly, the Election Officer's decision is affirmed in all respects.



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

Dated: June 7, 1991