

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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May 20, 1991

VIA FACSIMILE AND UPS NEXT DAY AIR

Robert E. Marciel
Secretary-Treasurer
IBT Local Union 63
1616 West Ninth Street, Suite 205
Los Angeles, CA 90015
FAX 213-487-7924

Gerald Moerler
13104 Glen Court, #40
Chino Hills, CA 91709
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Hector Velez
IBT Local Union 63
1616 West Ninth Street, Suite 205
Los Angeles, CA 90015
FAX 213-487-7924

Martin Perez
IBT Local Union 63
1616 West Ninth Street, Suite 205
Los Angeles, CA 90015
FAX 213-487-7924

Re: Election Office Case No. P-768-LU 63-CLA

Gentlemen:

A protest was filed with the Election Officer pursuant to Article XI of the Rules for the IBT International Union Delegate and Officer Election, revised August 1, 1990 ("Election Rules"). In his protest Mr. Gerald Moerler alleges that officers and business agents of Local Union 63 are soliciting, collecting and assisting members in the marking of official ballots in the Local 63 rerun election for delegates and alternate delegates to the 1991 IBT International convention. The Election Officer's investigation of this protest revealed the following.

A mail ballot rerun election is currently being conducted among the members of Local Union 63 for delegates and alternate delegates to the 1991 IBT International Convention. The ballots in this rerun election were mailed out on May 13, 1991 and are to be returned no later than May 31, 1991. Hector Velez is an officer of Local

Union 63 and Martin Perez is a business agent of the Local Union. Both Velez and Perez are identified in campaign literature as supporters of the Informed Teamsters for the Good of All Slate ("Informed Teamsters Slate") of delegate and alternate delegate candidates. The Informed Teamsters Slate is supported by Local Union 63 Secretary-Treasurer Robert E. Marciel.

The Election Officer's investigation revealed that both Velez and Perez have asked members of Local Union 63 to give them their official mail ballots, and that members of the Local Union have in fact surrendered their ballots to Velez and Perez, or to other members of the Local Union designated by Velez and/or Perez. Velez admitted that he made such requests and, received ballots, at the site of one employer employing about thirteen Local 63 members. He denied doing so with respect to any other members or at any other worksite locations. In addition, the Election Officer has determined that at least one member whose ballot was solicited by Perez and given to Velez or Perez was also instructed how to vote.

Article XII, Section 3(d) of the *Rules* specifically provides that "[i]t shall constitute a violation of these Rules for any Union member, officer, business agent, steward, etc. to require or request that any member give him/her such members' mail ballot". The Election Officer finds that the Election Rules have been violated by Messrs Velez and Perez.

It presently appears that no more than nine members have been requested to give or have given their ballots to another member. The Election Officer will continue to investigate to further determine whether ballots of additional members of the Local Union have been solicited by, surrendered to, or marked by or in the presence of Velez and Perez. Similarly, the Election Officer will determine whether other officers, employees or members of Local Union 63 have engaged in similar violations of the Election Rules. A further decision will be issued by the Election Officer¹.

With respect to the approximately nine members whose ballots the Election Officer finds were solicited, the Election Officer has been able to identify four of these members. Their ballots will be challenged by the Election Officer at the count. However, to prevent these members from being disenfranchised, all four members will

¹It is, of course, not possible for the Election Officer to determine whether these violations of the Election Rules have had, or will have, an impact on the outcome of this delegate election. Mr. Moerler, or the members of his slate, will be entitled to allege after the election in any post election protest filed that these violations of the *Rules* had an impact on the outcome of the election. A similar claim by the members of the Informed Teamsters Slate may however be precluded by Article XI, Section 1 (d) of the *Rules*.

be sent duplicate ballots, accompanied by an appropriate explanatory letter signed by the Election Officer, inviting them to cast a ballot in accordance with the *Rules*. A copy of such explanatory letter is attached hereto. The outer envelope and the return ballot envelope, will be marked so as to distinguish this second ballot from the first ballot sent these members.

The Election Officer will act similarly with respect to the additional four or five members whose ballots were also given to Velez or Perez or a member designated by them. To the extent that the Election Officer is unable to identify the names of the additional members, the ballots of all members employed at the worksite where the Election Officer had found ballot solicitation to have occurred will be challenged. All such members will be sent duplicate ballots in the manner described above. If necessary, the duplicate ballots will be sent by UPS, overnight delivery.

To remedy this violation of the Election Rules, the Election Officer orders the following immediate relief.² Since the Election Officer has determined that the violations were committed by a Local 63 officer and a Local Union business agent, both of whom are associated with the Informed Teamsters Slate, all costs associated with these remedies or the mailing of duplicate ballots, as described above, shall be borne by that slate.

1. Local Union 63 shall, before the close of business, Tuesday, May 21, 1991, transmit to each of its officers, business agents and stewards a copy of the attached memorandum from Secretary-Treasurer Robert Marciel. Such delivery shall be by hand delivery or facsimile. If the Local is unable to effectuate hand or facsimile delivery, the contents of the memorandum shall be read over the telephone to each officer, business agent and steward, who has not personally received a copy of the memorandum, before the close of business on May 21, 1991 and such individuals shall be sent a copy of the memorandum via overnight delivery.

2. Local Union Secretary-Treasurer Robert Marciel shall sign the attached English and Spanish language versions of the "Notice to Teamster Members". Such signed notices shall be duplicated and posted on all Local Union 63 bulletin boards. Such posting shall be accomplished by the close of business on May 21, 1991. If necessary, the Local Union shall cancel vacations and days off for all Local Union 63 employees to insure that posting is made in a timely manner.

3. The Local Union shall immediately deliver to the Election Office Regional Coordinator executed copies of the English and Spanish language versions of the notice. The Election Office shall then mail copies of the notice to all members of Local Union

² The Election Officer may order additional relief as may be warranted by the results of his continuing investigation.

163 employed at the worksite where solicitation has occurred.

4. Hector Velez and Martin Perez shall report to the Local Union 63 Hall at 1616 West Ninth Street, Room 205, Los Angeles, California at 2:00pm on Thursday, May 23, 1991, at which time they will be examined, under oath, by a representative of the Election Officer. Messrs. Velez and Perez may be represented at such examination by an IBT member or an attorney of their own choice.

5. Local Union 63 shall submit to the Election Officer, within 48 hours of its receipt of this determination, an affidavit setting forth in detail its compliance with the terms of this order. Local 63 shall also submit to the Election Officer, and simultaneously to the Informed Teamsters Slate, an affidavit delineating the costs it incurred, item by item, in complying with this decision. This affidavit shall include the time spent by Local 63 officers and/or employees in effectuating compliance and the salary and pro rata benefit costs paid by the Local for such time.

6. The Informed Teamsters Slate shall reimburse the Local for all costs incurred by the Local in complying with this decision within 96 hours of receiving the Local's affidavit. The Informed Teamsters Slate shall simultaneously file an affidavit with the Election Officer with accompanying copies of checks, money orders, etc. demonstrating that such reimbursement has been accomplished.

7. The Election Officer will notify the Informed Teamsters Slate of any costs incurred by the Election Officer in mailing notices or duplicate ballots. Within 96 hours of receiving any such notice, the Informed Teamsters Slate shall remit the amount so noted to the Election Officer.

8. 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

Robert E. Marciel
Page 5

(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,

A handwritten signature in black ink, appearing to read "Michael H. Holland". The signature is fluid and cursive, with a large initial "M" and a long, sweeping tail.

Michael H. Holland
Election Officer

cc: Frederick B. Lacey, Independent Administrator, IBT via FAX
Geraldine L. Leshin, Regional Coordinator via FAX
Susan Jennick, Esquire via FAX
Robert Vogel, Esq. via FAX

NOTICE TO TEAMSTER MEMBERS
FROM IBT LOCAL UNION 63
REGARDING DELEGATE ELECTION

The re-run election of delegates and alternate delegates to the 1991 International Union Convention is now underway. You should have received your secret ballot for that election in the mail.

Each member of Local Union 63 has the right to cast a secret ballot for the election of delegates and alternate delegates to the 1991 IBT Convention and for International Office in the IBT. No one, no Local Union officer, business agent, steward, or member, has the right to ask for your ballot. Do not give your ballot to anyone. Do not show your marked ballot to anyone, or ask anyone to mark your ballot for you.

Call Election Office Regional Coordinator Geraldine Leshin immediately at 818-566-8918 (collect), if anyone has asked for your ballot, if you have given your ballot to anyone, if anyone has marked your ballot, or assisted you in marking your ballot.

The Election Officer shall treat all such communications from Local Union 63 members about their ballots as **confidential**.

Robert E. Marciel
Secretary-Treasurer
IBT Local Union 63

This is an official Election Office Notice, which must remain posted for thirty (30) consecutive days from the first day of posting, and must not be altered, defaced, or covered by any other material.

**AVISO A LOS MIEMBROS DE TEAMSTER
DE LA UNION LOCAL IBT 63 [IBT LOCAL UNION 63]
SOBRE LA ELECCIÒN DE DELEGADOS**

La segunda elecciòn de delegados y delegados suplentes para la Convención IBT International Union de 1991 está ahora en camino. Usted ya debe haber recibido su balota secreta por correo para está elecciòn.

Cada miembro de la Union Local 63 tiene el derecho de hacer su votación secreta para la elecciòn de delegados y delegados suplentes a la Convención IBT de 1991 y para los Oficiales Internacionales en el IBT. Nadie, sea funcionario de la Union Local, agente de negocios, dirigente [steward] ó miembro, tiene el derecho de pedir su balota. No le dé su balota a nadie. No le muestre su balota marcada a nadie, ni le pida a nadie que marque su balota.

Llame inmediatamente a la coordinadora regional de la Oficina de Elecciones, Geraldine Leshin, al 818-566-8918 (a cobrar) si alguien le ha pedido su balota, si usted le ha dado su balota a alguien ó si alguien ha marcado su balota ó le ha asistido a marcar su balota.

El Oficial de Elecciones tratará toda comunicaciòn efectuada por los miembros de la Union Local 63 con respecto a sus balotas como asunto confidencial.

Robert E. Marciel
Secretario-Tesorero
IBT Local Union 63

ESTE ES UN AVISO OFICIAL DE LA OFICINA DE ELECCIONES EL CUAL DEBE ANUNCIARSE POR TREINTA DIAS CONSECUTIVOS DEL PRIMER DIA DEL ANUNCIO Y NO HA DE MODIFICARSE, GARABATEARSE, ó CUBRIRSE CON NINGUNA OTRA MATERIA.

**MEMORANDUM TO ALL LOCAL UNION 63
OFFICERS, BUSINESS AGENTS AND STEWARDS
FROM ROBERT MARCIEL
SECRETARY-TREASURER IBT LOCAL UNION 63**

The Election Officer has determined that certain officers and business agents of Local Union 63 and supporters of the Informed Teamsters for the Good of All Slate have solicited and received official ballots in the current delegate election from members of Local Union 63.

It is a violation of the Election Rules for any Union member, officer, business agent, steward, etc. to require or request that any member give him/her such member's mail ballot.

If you have requested, orally or in writing, that any member give you, or anyone else, their mail ballot you must immediately: 1) cease making any such statement and, where applicable, remove any notices or posting requesting members to surrender their ballots; 2) contact Election Office Regional Coordinator Geraldine L. Leshin (818-566-8918) immediately.

If you have received, or know of anyone who has received, mail ballots other than your/their own, you must: 1) contact Election Office Regional Coordinator Geraldine Leshin immediately; 2) deliver, by hand, all such ballots to Ms. Leshin at 353 East Angeleno Street - Suite E, Burbank, CA.

Your immediate compliance with these instructions is required. If you have any knowledge of ballot solicitation and fail to contact Ms. Leshin, you are personally subject to sanctions by the Election Officer. If you have any questions about this matter, please contact Ms. Leshin.

Sincerely,

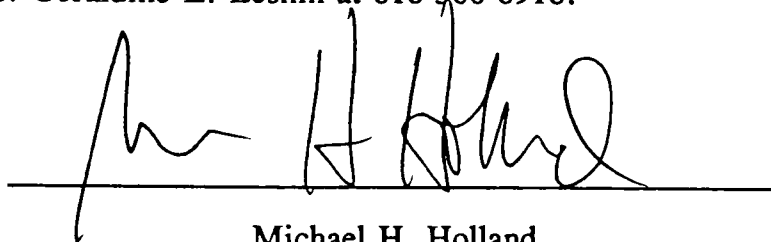
Robert Marciel

NOTICE TO CERTAIN MEMBERS OF IBT LOCAL UNION 63
FROM
ELECTION OFFICER MICHAEL H. HOLLAND

It has come to the attention of the Election Officer that you may have given your official ballot in Local 63's delegate and alternate delegate rerun election to a member or officer of Local Union 63 rather than mailing the ballot yourself. By surrendering your ballot in this manner your vote in that election is subject to challenge.

In order to insure that your vote will be counted in this important election, the Election Office is issuing you a duplicate ballot. I urge you to cast this ballot in secret and to deposit the completed ballot yourself in the United States Mail, according to the instructions inclosed with the ballot materials. **Do not give this ballot to anyone.**

If you have any questions please feel free to contact the Election Office Regional Coordinator, Ms. Geraldine L. Leshin at 818-566-8918.

A handwritten signature in black ink, appearing to read "Michael H. Holland", is written over a horizontal line. The signature is cursive and somewhat stylized.

Michael H. Holland
Election Officer

IN RE:

GERALD MOERLER

and

INFORMED TEAMSTERS FOR THE
GOOD OF ALL SLATE

and

IBT LOCAL UNION NO. 63

91 - Elec. App. - 153 (SA)

DECISION OF THE
INDEPENDENT
ADMINISTRATOR

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5/30/91

This matter arises out of a challenge to a decision of the Election Officer in Case No. P-768-LU63-CLA. A hearing was held before me by way of telephone conference on May 28, 1991, at which the following persons were heard: Robert D. Vogel, an attorney ostensibly on behalf of Local 63; the complainant, Gerald Moerler; Mr. Moerler's attorney, Susan Jennik; Geraldine Leshin, the Regional Coordinator; Ralph Eliaser and Michael Franklin, the Adjunct Regional Coordinators; and John J. Sullivan and Barbara Hillman, on behalf of the Election Officer.

This matter involves an extremely grave situation. Local 63 is in the midst of a rerun election. Mail ballots were sent to members on May 13, 1991, and will be counted on May 31, 1991. Mr. Moerler is a member of Local 63 and a candidate for delegate to the 1991 IBT International Convention on the "Delegates For Carey Slate" (the "Carey Slate"). The Carey Slate's chief opponent is the "Informed Teamsters For The Good Of All Slate" (the "Informed Teamsters Slate"). The Informed Teamsters Slate is publicly supported by the Local's incumbent officers.

Mr. Moerler contended that Local 63 representatives, all of whom are supporters of the Informed Teamsters Slate, have requested members to surrender their mail ballots to them for collection. Such action would, of course, fly in the face of the concept of a secret ballot vote and infect the integrity of the election. The Rules For The IBT International Union Delegate And Officer Election (the "Election Rules") specifically prohibit any "Union member, officer, business agent, steward, etc., to require or request that any member give him/her such member's ballot." Election Rules, Article XII, Section 3.

The Election Officer took swift action to investigate the protest. The Election Officer's preliminary investigation found that ballots were indeed solicited from members by representatives of the Local. In particular, the Election Officer found that Hector Velez, Local 63 Recording Secretary and Business Agent, and Martin Perez, another Business Agent, solicited ballots from at least nine members. Messrs. Velez and Perez are both public supporters of the Informed Teamsters Slate.

The Election Officer's findings regarding Messrs. Velez and Perez were not challenged.

Wishing to take swift and immediate action, the Election Officer, inter alia, directed Local 63 to transmit to each of its officers, Business Agents and Stewards a memorandum signed by the Secretary-Treasurer warning that it is a violation of the Election Rules to require or request that any member surrender their ballot.

Local 63 challenged the wording of that notice arguing that it was misleading and deceiving. The Local specifically took issue with the wording in the notice which states that "certain officers and business agents of Local Union 63 and supporters of the Informed Teamsters For The Good Of All Slate had solicited and received official ballots . . ." The Local contended that the notice gives the impression that there were more officers involved than Recording Secretary Velez and that "in addition to" Messrs. Velez and Perez, additional supporters of the Informed Teamsters Slate were also involved. Local 63's contentions here are rejected for the reasons expressed by the Election Officer in his Summary:

Turning finally to the merits of the Local's professed objections to the language of the notice, the Election Officer rejects them as mere cavil. The violators were indeed agents of the Local and supporters of the Informed Teamsters Slate, as the notice indicates. The use of the conjunctive signifies the two capacities of the two violators and does not convey a multitude of violators. Similarly, the use of the plural in "officers and business agents" is defensive. Mr. Perez is a business agent; Mr. Velez is an officer (Recording Secretary) as well as a business agent. Therefore, to refer to "business agents" in the plural was completely accurate. And although technically there was only one officer who is known at this time to have engaged in ballot solicitation (Mr. Velez), it splits hairs unnecessarily to carp that the notice should have referred to only a single "officer."

The notice cannot be said to have created a false impression. Rather, the gist and point of the notice -- that agents of the Local/supporters of the Informed Teamsters Slate engaged in ballot solicitation -- is entirely accurate. [Emphasis in original]

Another aspect of the Election Officer's remedial order is challenged by the Local; that is the directive that the Informed

91 THU 14:29 INDEPENDENT

Teamsters Slate bear the cost of compliance with the Election Officer's decision. The Local seemed to suggest that the Election Officer's remedy was not an effective one in that it did not punish the individuals found to have committed the wrongdoing -- Messrs. Velez and Perez. Apparently, the argument is that for the Local to insure enforcement of the Election Rules, those who violate the Rules should be held personally accountable.

The Election Officer's remedy does not, however, preclude the Local from taking any disciplinary action against Messrs. Velez and Perez that it may deem warranted. That the Local may seek a more vigorous remedy does not necessitate a finding that the Election Officer's remedy should be vacated. Accordingly, the Election Officer's directive regarding the costs to be borne by the Informed Teamsters Slate is affirmed.

One last issue needs to be addressed. In his Summary, the Election Officer stated that:

Although Mr. Vogel may purport to represent the Local, it appears that the real interest he is serving is that of the Informed Teamsters. Assuming that the Local pays Mr. Vogel a fee for the services he renders in this appeal, such payment is in effect a contribution to the slate that benefits therefrom.

Article VIII, Section 10(c) of the Election Rules prohibits Unions from using their funds and personnel to assist in the campaign of any candidate. Accordingly, the Local is prohibited from providing the services of its counsel to assist the cause of the Informed Teamsters slate. The Local Union and the Informed Teamsters Slate are hereby put on notice to ensure that the services rendered by the Local's attorney do not bring the Local and the Informed Teamsters Slate into violation of the Election Rules.

To remedy this alleged violation, the Election Officer requested that the Informed Teamsters Slate be compelled to reimburse the Local for any monies it has paid to Mr. Vogel in connection with this appeal.

I agree with the Election Officer's characterization of Mr. Vogel's participation in this appeal and will, as requested by the Election Officer, order that the Informed Teamsters Slate reimburse the Local for monies paid to Mr. Vogel for his service.

The Local was not charged with any wrongdoing here. The posting and distribution of the notices only implicated the Local on an administrative level. Mr. Vogel's arguments regarding the costs to be incurred by the Informed Teamsters Slate revealed just how transparent the Local's position was. The Local was not implicated in that directive in any manner, yet it argued that the Informed Teamsters Slate should not be saddled with the cost. In making such an argument, no matter how it is couched, it is clear that Mr. Vogel is serving not as the Local's counsel, but as the Informed Teamsters Slate's advocate.

Accordingly, the Secretary-Treasurer of the Local is directed to supply an Affidavit to the Election Officer and the Informed Teamsters Slate setting forth all monies paid to Mr. Vogel in connection with this appeal. That Affidavit shall be served within four days of this decision. That Affidavit shall also be accompanied by a Certification from Mr. Vogel verifying the amount stated therein. Within four business days thereafter, the Informed

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Teamsters Slate is to reimburse the Local for all monies paid to Mr. Vogel as set forth in the Affidavit. The Local is, of course, precluded from paying any additional monies to Mr. Vogel in connection with this matter. Mr. Vogel must look to the Informed Teamster Slate for payment.

In anticipation of the Local arguing that Mr. Vogel is on a retainer (and thus it cannot be determined how much it has paid Mr. Vogel), I direct that in such an event, Mr. Vogel is to submit a Certification of Services to the Election Officer and the Informed Teamsters Slate within four business days of this decision. That Certification shall set forth all time spent on this appeal, the hourly rate Mr. Vogel charges, along with any expenses charged. Within four business days thereafter, the Informed Teamsters Slate shall pay to the Local the full amount set forth in Mr. Vogel's Certification. This alternative only need be followed if the Local is unable to discern how much it has paid Mr. Vogel in connection with this matter.

The last item to be addressed is Mr. Moerler's request for additional relief. Mr. Moerler asked that the Carey Slate be reimbursed for the money it expended in investigating this matter. That request is denied. That the Carey Slate took it upon itself to actively pursue this matter is commendable. It is not entitled, however, to be paid for its efforts.

91 THU 14:30 TELETYPE
I also do not see any need, under these circumstances, to have the Carey Slate reimbursed for the cost incurred in answering this appeal.

Lastly, the Carey Slate contended that the violations alleged herein are continuing and that the Local has not complied with the Election Officer's remedial order. Thus, it is suggested that contempt proceedings are in order. This request is premature. The Election Officer is continuing his investigation of this matter. If he finds that the Local has intentionally violated his orders, then he may recommend contempt proceedings. If this requires that the matter be brought before United States District Judge David N. Edelstein, the Independent Administrator will not hesitate to set such action in motion.

If the Election Officer finds that the Informed Teamsters Slate has continued to violate the Election Rules and the Election Officer's orders, the Election Officer should consider all appropriate remedies available to him, including the disqualification of the Informed Teamsters Slate from the selection.

Accordingly, the decision of the Election Officer is affirmed and his request regarding Mr. Vogel's counsel fees is granted.

Stuart Alderoty /JR/

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

Dated: May 30, 1991