

OFFICE OF THE ELECTION OFFICER  
% INTERNATIONAL BROTHERHOOD OF TEAMSTERS  
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Michael H. Holland  
Election Officer

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September 11, 1991

**VIA UPS OVERNIGHT**

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

Everett J. Roberts  
Trustee  
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-856-LU63-CLA**

Gentlemen:

A protest was filed pursuant to the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules") by Gerald Moerler, a member of Local 63 in Los Angeles, California. In his protest, Mr. Moerler alleges that his employer, Vons Grocery Company, is retaliating against him for his political activities by improperly disciplining him for various work absences, in violation of Article VIII, § 10 of the *Rules*. The investigation was conducted by Gary Feldman, Election Office Adjunct Regional Coordinator. The investigation disclosed the following facts.

On August 7, 1991 Mr. Moerler, who was a delegate to the 1991 IBT International Union Convention from Local 63, received an absentee report from his employer. The absentee report indicates that Vons Grocery classified several sick days taken by Mr. Moerler during the week of July 19 through July 26, 1991 as unexcused absences and issued attendance points for those absences. In the report the company also assessed Mr. Moerler two absentee points for work absences incurred on May 6, through May 10, 1991.

Mr. Moerler charges that the employer assessment of absentee points for the May 1991 absences violated the Election Officer's decision in Election Office Case No. P-754-LU63-CLA.<sup>1</sup> Mr. Moerler states that, after filing the protest, he was contacted by

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<sup>1</sup>The absences on May sixth, seventh and eighth were the subject of a protest filed by Mr. Moerler on May 9, 1991. See Election Office Case No. P-754-LU63-CLA. In that case, the employer agreed to permit Mr. Moerler to take unpaid leave off during the

George Misso, Operations Manager at the Vons Oxford facility where Mr. Moerler works. Mr. Moerler states that Mr. Misso informed him that the company had erroneously calculated some of his attendance points. Mr. Misso specifically advised Mr. Moerler that the company had erred in charging him points for his absences on May 6, May 7 and May 8, 1991. The company has agreed not to charge Mr. Moerler any attendance points for the May 6, May 7 and May 8 absences and to record those absences as "time off without pay." Thus, Mr. Moerler will not receive any absentee points for those three dates. Accordingly, the issue with respect to the absentee points for May 6, May 7 and May 8 has been RESOLVED.

Mr. Moerler also protests the fact that Vons Grocery issued three absentee points for time off during the week of July 19, 1991 when he was ill. The investigation disclosed that Mr. Moerler was out of work on July 19, July 20, July 21 and July 23. Mr. Moerler was not regularly scheduled to work on July 21, since it was Sunday, which is his regularly scheduled day off. Mr. Moerler submitted a doctor's excuse for the time period in question and argues that the written excuse from the doctor should exempt him from any points assessment for the period in question.

On July 31, 1991, all drivers of Vons Grocery were notified that, due to a recent arbitration decision, the absentee policy of the company had changed back to an agreement made between the company and the Union in December of 1987. That policy, which is now in effect, provides in relevant part that employees will be assessed two points for any full shift absence from scheduled work except for "jury duty, vacation, funeral leave, military leave, holidays, pre-approved requests off, authorized absences and paid sick days (including waiting days) only if all such paid sick and waiting days are covered by a doctor's excuse." The policy further states that an employee will receive three points assessment for any absence on the first or last day of a work week.

A review of Mr. Moerler's absentee report discloses that Vons Grocery assessed Mr. Moerler three points for the July 21, 1991 absence. Mr. Moerler maintains that the fact that he had a doctor's excuse for the period in question should excuse him for the imposition of any points assessments incurred from being absent on the first or last day of the work week.

The employer contends however that the separate provision of its policy providing for the assessment of absentee points for any absence on the first or last day of a work week supersedes that portion of the policy which excuses absences covered by a doctor's statement. The employer thus contends that an employee will receive absentee points

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time period in question in connection with the Local 63 delegate and alternate delegate election.

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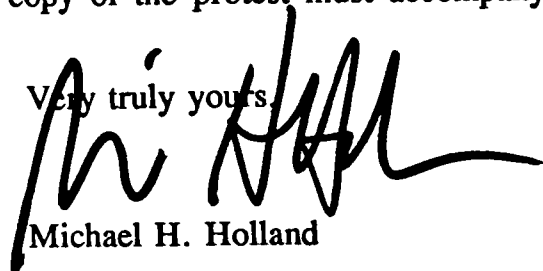
assessments for any absence taken on the first or last day of a work week, regardless of whether or not the employee submitted a doctor's excuse.<sup>2</sup>

Whether the employer's interpretation of its policy is correct and whether the policy so interpreted violates the collective bargaining agreement, the Election Officer investigation has found no instance where Vons application of its policy was not in accord with the position now being advanced by the company. Accordingly there is no basis for finding that Mr. Moerler was subject to discrimination or disparate treatment by Vons Grocery.

There is no evidence to indicate that Mr. Moerler was being discriminated against or that he is being treated differently from any other employee of Vons Grocery, Inc. There is no evidence supporting Mr. Moerler's allegation that Vons is retaliating against him for his political activities or for any other reason. Accordingly this aspect of the protest is denied.

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/cb

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

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<sup>2</sup> The Election Officer notes that absentee policies embodying the interpretation urged by the company here have been found in other situations, under different collective bargaining agreements, to be reasonable.