

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

Michael H. Holland
Election Officer

(202) 624-8778
1-800-828-6496
Fax (202) 624-8792

November 25, 1991

VIA UPS OVERNIGHT

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

Jim Santangelo
Secretary-Treasurer
IBT Local Union 848
9960 Baldwin Place
El Monte, CA 91731

Bruce Blake
1101 West Road
LaHabra Heights, CA 90631

William Rose
Certified Grocers of CA
2601 Eastern Avenue
Los Angeles, CA 91731

Re: Election Office Case No. P-1059-LU63-CLA

Gentlemen:

A protest was filed pursuant to Article XI of the *Rules for the IBT International Union Delegate and Officer Election*, revised August 1, 1990 ("Rules") by Gerald Moerler, a member of IBT Local Union 63. Mr. Moerler raises four separate issues in this protest: (1) officers of Local 848 engaged in campaign activities at Certified Grocers in work areas and during work time; (2) the employee bulletin board at Certified Grocers is too small and Ron Carey literature has been improperly removed from it; (3) Local 848 sent a letter to its members endorsing the R. V. Durham Unity Team; and (4) Certified Grocers announced that it will not permit employees to post on the bulletin board after the election.

This protest was investigated by Regional Coordinator Geraldine Leshin. Mr. Moerler is not employed by Certified Grocers. Neither is he a member of the Local Union representing Certified Grocers employees. Mr. Moerler is a member of Local 63; Local 848 represents the IBT members employed by Certified Grocers.

1. Campaigning at Certified Grocers

Jim Santangelo, Secretary-Treasurer of Local Union 848, campaigned at Certified Grocers on Monday, November 4th and Tuesday, November 5th. On the latter date,

Gerald Moerler
November 25, 1991
Page 2

Rick Middleton, Recording Secretary of Local Union 848, was also present. Santangelo was at the facility on Monday for a meeting and spent about two hours after the meeting campaigning. They campaigned for about one and one-half hours on Tuesday. They were in work areas during the employees' work time.¹

Mr. Santangelo states that he believes that Certified Grocers permits campaigning in work areas among employees who are themselves on work time and assumes that this policy applies to all candidates. Certified Grocers disagrees with this statement of its policy. Certified Grocers states that it would not knowingly permit anyone, an employee or a non-employee, to campaign in work areas or among employees who are working or on work time. There is no evidence that Certified Grocers management was aware of the visits by Mr. Santangelo and Mr. Middleton or the campaign activities which occurred during these visits. There is no evidence that others asked for and were denied the opportunity for similar access.

Whether or not Certified Grocers has a past practice of permitting campaigning in work areas during the work day and whether or not Certified Grocers would be required to permit other candidates to campaign in work areas during the work day is not the issue here. The protest alleges that Mr. Santangelo and Mr. Middleton violated the *Rules* by campaigning during the work day in work areas.

The *Rules* do not prohibit an employer from permitting campaigning in work areas during the work day so long as any such policy or practice is made available to all IBT members. *Rules*, Article VIII, § 10(d). Mr. Santangelo and Mr. Middleton did nothing improper by their campaign activities at Certified Grocers. For these reasons, this aspect of the Mr. Moerler's protest is DENIED.

2. The Employee Bulletin Board

This protest is not the first time issues involving bulletin boards at Certified Grocers have been addressed by the Election Officer. In a previous protest involving some of these same parties, the Election Officer ordered Certified Grocers to permit campaign literature to be posted on certain bulletin boards in the employee break room in the mechanized warehouse of the Los Angeles facility. Election Office Case. No.

¹ There is no allegation that they were on paid Union work time while they were campaigning. Mr. Santangelo states that they both were on unpaid personal time for the hours of campaigning.

Gerald Moerler
November 25, 1991
Page 3

P-953-LU848-CLA.² Mr. Moerler now alleges that the bulletin boards are too small to hold all of the campaign material and other information and that Ron Carey literature has been therefore removed.

The *Rules* do not contain any requirements concerning the dimensions of the Union bulletin boards. Indeed, there is no requirement in the *Rules* that employers must have bulletin boards at all. The only requirement in the *Rules* is that pre-existing rights to use bulletin boards may not be restricted with respect to posting campaign literature. *Rules*, Article X, § 10(d) This was the issue raised and decided in the previous protest. The Election Officer held that IBT members employed by Certified Grocers were entitled to use certain bulletin boards at the company facility for campaign postings. There was no requirement that Certified Grocers change or enlarge the size of the bulletin board. There is no assertion that Certified Grocers is not complying with the Election Officer's previous decision. For these reasons, this aspect of Mr. Moerler's protest is DENIED.³

3. The Endorsement Letter

A campaign mailing was sent to the members of Local Union 848. A letter with the letterhead "Elect the R. V. Durham Unity Team" was signed by the members of Local 848's Executive Board and states, "The undersigned members of the Executive Board of your Teamsters Local 848, acting as individual Teamster members, have endorsed the Durham Unity Team..." At the end of the letter, after the signatures, there is a statement that "No union funds were used in connection with this endorsement, or to produce or distribute this letter." Enclosed with the letter was a leaflet listing the names of the candidates on the Durham Unity Team with their photographs. The material was sent in a plain envelope with no return address and no other printing on the envelope besides the address label. Mr. Santangelo provided copies of bills, money orders, and other documentation showing that the preparation, duplication and mailing was not paid with Union funds.

There is no evidence indicating that the contents of the mailing constitutes an improper endorsement of a candidate by a Local Union as opposed to individual members of the Union. See Election Office Case No. P-1171-LU677-ENG and P-1172-LU24-CLE. There is no evidence indicating that the mailing was financed out of Local Union funds. Therefore, the Election Officer DENIES this aspect of the protest.

² There was no issue or discussion in that prior decision about the size of the bulletin boards.

³ Other than problems inherent with the size of the bulletin board, no evidence was uncovered that literature for Ron Carey and his slate was removed or covered.

Gerald Moerler
November 25, 1991
Page 4

4. Access to the Bulletin Board After the Election

According to the protest, an official of Certified Grocers told employee Bruce Blake that, after the election, Certified will not permit employees to post anything on the bulletin boards. As noted above, as a result of the Election Officer's previous decision in Election Office Case No. P-953-LU848-CLA, Certified Grocers is required to permit employees to post campaign literature on certain bulletin boards and is so doing.

In a recent decision involving the question of non-employee access to Yellow Freight premises, the U. S. Court of Appeals for the Second Circuit commented on the question of whether such access must be required after the IBT election as follows:

We note, finally, that if Yellow Freight should on remand be validly compelled to provide access to its Chicago Ridge property in connection with the 1991 IBT election, such compelled access would not inhibit Yellow Freight's continued entitlement to enforce its "no solicitation" policy in the future, in the absence of judicial direction to the contrary. Yellow Freight would not in such circumstances have voluntarily abandoned its policy or willingly established any exception to it [citations omitted]. Accordingly, such a ruling would establish only that Yellow Freight may on occasion be required to provide access to its property in furtherance of the Consent Decree, despite its "no solicitation" policy. Yellow Freight would continue to be entitled to limit access to its property pursuant to the "no solicitation" policy, subject only to the general limits of federal labor law [citation omitted].


United States v. IBT, et al and Yellow Freight Systems, U. S. Court of Appeals for the Second Circuit, Docket No. 91-6096, decided October 29, 1991, slip opinion pages 25-26.

Following the Court's analysis, if Certified Grocers is now allowing employees to post materials on bulletin boards only by virtue of the Election Officer's directive, it may well be that Certified Grocers may be permitted to revert to its previous policy after the IBT International Union officer election. Such reversion to a previous policy after the IBT International Union officer election would not, under the Second Circuit's analysis, be a violation of the *Rules*. Whether or not it would be a violation of other federal labor laws is to be adjudicated in an appropriate forum other than before the

Gerald Moerler
November 25, 1991
Page 5

Election Officer. Thus, the statement attributed to Certified Grocers does not constitute a violation 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/mjv

cc: Frederick B. Lacey, Independent Administrator

Geraldine L. Leshin, Regional Coordinator

Susan Jennik, Esq.
Association for Union Democracy
500 State Street
Brooklyn, NY 11217

Ron Carey
c/o Richard Gilberg, Esquire

R. V. Durham
c/o Hugh J. Beins, Esquire

Walter Shea
c/o Robert Baptiste, Esquire