

**OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS**

IN RE: BLAIR KENNY, ED KOCH,)	Protest Decision 2006 ESD 178
MIKE LAROCCA, and)	Issued: April 13, 2006
BRYAN McLAUGHLIN,)	OES Case Nos.P-06-069-011706-NE,
)	P-06-087-012606-NE,
Protestors.)	P-06-088-012606-NE,
)	& P-06-093-013106-NE
)	

Blair Kenny, Ed Koch, Mike LaRocca, and Bryan McLaughlin, members and alternate delegate candidates of Local Union 118, filed related pre-election protests pursuant to Article XIII, Section 2(b) of the Rules for the 2005-2006 IBT International Union Delegate and Officer Election (“*Rules*”). The protests alleged a number of violations against Local Union 118 officers who were also candidates for delegate, including allegations that local union officers intentionally distributed *Rules* books with omitted pages, used Union resources to file a protest, prevented access to a union meeting, prevented campaign material from being posted on bulletin boards, and accepted union-paid legal advice to further their delegate campaigns and influence the outcome of the election, all in violation of the *Rules*. We have consolidated these protests for decision.

Election Supervisor representatives Steven R. Newmark and David R. Reilly investigated these protests.

Findings of Fact and Analysis

1. Distribution of incomplete Rules books

The protest alleged that local union secretary-treasurer Chris Toole provided the protestors Kenny and McLaughlin with copies of the *Rules* that were missing pages 46 to 60. Toole distributed the copies at the nominations meeting held on January 4, 2006. The missing pages included information on filing protests and appeals procedures. After protestor Kenny noticed that pages were missing, he went to the IBT website and downloaded a complete copy of the *Rules*. Kenny filed the protest claiming that Toole intentionally omitted the pages in order to prevent him and McLaughlin from exercising their protest rights.

Kenny told our investigator that Toole gave him a copy of the Office of the Election Supervisor-printed pocket size version of the *Rules* sometime between January 13 and January 17, 2006. McLaughlin stated that he too received a pocket size version around this time. Each of these copies contained all provisions of the *Rules*.

Local union clerical employee Debra Baroody was responsible for copying the *Rules* for distribution at the candidates’ meeting. She told us that the photocopier jammed several times during the copying process, and she did not realize that pages were missing from copies until the protest was filed. She stated that the incomplete copies resulted from machine malfunction and was not a deliberate attempt to undermine or prevent any candidate from conducting a successful campaign.

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Toole told our investigator he was not aware that the *Rules* books had missing pages when they were distributed at the nominations meeting and did not learn of it when he was informed by the protestor. Toole stated that the missing pages were an oversight and that there was no intention on his part to affect the campaigns of the protestor and McLaughlin. Toole gave both Kenny and McLaughlin complete, pocket-size versions of the *Rules* on January 17, the same day that he received them in the mail from our office.

Our investigation has uncovered no evidence that Toole or any other representative of the local union intentionally omitted pages from the copies of the *Rules* handed out at the candidates' meeting. To the contrary, Baroody has acknowledged that the missing pages were the result of machine malfunction. Kenny's obtaining of the complete *Rules* from the IBT website and Toole's prompt distribution of the complete, pocket-size *Rules* books cured any problem that could have resulted from what we find to be the local union's distribution of inadvertently incomplete *Rules* at the candidates' meeting.

Finally, we note that the portions of the *Rules* that were missing from Toole's initial distribution – the protest procedures themselves – did not prevent or interfere with Kenny's ability to file a protest.

Accordingly, we DENY this aspect of the protest.

2. *Using union resources to file a protest*

The second allegation claims that Toole violated the *Rules* when he faxed a protest to the Election Supervisor printed on union stationery using a union fax machine.

Assuming these facts are true, Toole's pre-election protest does not violate the *Rules*. Filing a protest "is protected, and does not constitute support for a candidate or campaigning under the Rules." *Reyes*, 2000 EAD 28 (September 27, 2000) (use of a union fax machine to file protest no violation); *Kieffer*, P360 (March 19, 1996) (same). The right to file a protest is paramount and may not be restricted in any way. *Koles*, P487 (March 4, 1996) (use by local union officer of local's fax machine and other equipment as well as secretarial time does not violate *Rules*).

Therefore, we DENY this aspect of the protest.

3. *Greece Central School District Bulletin Board Policy*

Two protests alleged that the *Rules* were violated when campaign flyers were removed from union bulletin boards at Greece Central School District. According to the protests, the bulletin boards are used by union members and officials to post information concerning union activities. The protests contend that all members should be permitted access to the union bulletin boards.

Shop steward and alternate delegate candidate Bryan McLaughlin stated that on January 11, he posted flyers for himself and alternate delegate candidates Koch, LaRocca, and Kenny on union bulletin boards in buildings within the school district.

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On January 12, local union vice-president Gene DeLorne asked secretary-treasurer Toole whether candidates may use union bulletin boards to post campaign material. Toole replied that a candidate had an unrestricted right to campaign in any employer parking lot and hand out flyers in non-work areas during non-work time; he added that if Greece Central was going to afford one candidate the right to use bulletin boards to campaign, that right would have to be extended to all candidates.

DeLorne directed business agent Mike Jarosinski to contact Greece Central human resource administrator Ted Hershey to convey this information. Hershey was concerned about allowing campaigning on bulletin boards, so he asked Jarosinski to provide names of several companies under contract with Local Union 118. Hershey contacted three companies Jarosinski supplied and asked how they handled solicitation and bulletin board policies. Hershey learned that none of the companies allow employees to post handbills promoting an individual's election to any political or union position on bulletin boards designated for union business or anywhere else in the work place. He then requested a letter from Local Union 118 concerning use of union bulletin boards at Greece Central.

In a letter faxed to Hershey, Michael Harren, a lawyer retained by Local Union 118, repeated Toole's earlier statements concerning candidates' access to school district property, including union bulletin boards.

Jeffrey Moulton, transportation shop steward for Greece Central, said he was asked by McLaughlin on January 17, to post his flyers on the union bulletin boards. Moulton stated that he has the key for the locked bulletin board in his work area, he honored McLaughlin's request, and that he would have done the same for any other candidate who asked.

On January 20, Moulton was called into assistant director of transportation John Kemp's office, where Kemp and Hershey were awaiting him. Hershey told Moulton that he needed to take down the flyers because they violated district policies concerning political elections, and he believed they also violated federal policies concerning union elections. Moulton contends that Hershey told him that if he did not take down the flyers Hershey would have the bulletin board removed from the wall. Moulton removed the fliers.

Toole told our investigator no officer or business agent of the local union directed or asked Greece Central to curtail campaigning on union bulletin boards. According to Toole, Local Union 118 does not permit use of any union bulletin board for anything other than official postings of the local union.

According to Hershey, Greece Central has set aside bulletin boards designated for use by Local Union 118 for postings concerning union/district issues. The boards are the property of Greece Central. Hershey told our investigation that past practice Greece Central has been to allow announcements of steward elections and general meeting information. Greece Central has never allowed the boards to be used for political or election campaigning of any sort nor does it allow outside individuals access to the bulletin boards for other postings not related to general union information.

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Greece Central's lawyer reviewed the decision not to allow campaign flyers on union bulletin boards on district property and advised that district's position complies with district policy.

Article VII, Section 12(d) of the *Rules* provides in relevant part: "No restrictions shall be placed upon candidates' or members' preexisting rights to use employer or Union bulletin boards for campaign publicity."

The right to post campaign materials on worksite bulletin boards is determined by past practice. *Rodriguez*, P348 (February 1, 1996); *Blake*, P953 (October 30, 1991); *Meyer*, P130 (October 12, 1995); and *Lawrence*, 2001 EAD 190 (February 23, 2001). Where there is no past practice, there is no right to post campaign literature on a bulletin board. *Lambert*, P359 (February 26, 1996).

We find that there was no past practice permitting campaign literature to be posted on union bulletin boards at Greece Central.

Accordingly, we DENY this aspect of the protest.

4. Accepting union-paid legal advice

The protestors alleged that the Unity slate, comprised of local union officers, received an impermissible campaign contribution in the form of the foregoing legal opinion provided by union-paid attorney Harren to Greece Central HR administrator Hershey concerning campaigning on union bulletin boards. The protestors contend that the incumbent officers used union-paid legal advice to interfere with campaign rights and to influence the outcome of the election.

Investigation showed that, at the direction of secretary-treasurer Toole, Harren faxed a letter to Hershey of Greece Central on January 20. Captioned "Access to Employer Premises and Bulletin Boards During Intra-Union Elections," the letter stated "the position of the Union with respect to access to school district property, including Union bulletin boards, by candidates during intra-union election campaigns," *viz.*,

Local 118 is committed to a fair and open process for local union elections. To that end, the Local Union will insist that any accommodation afforded to one candidate by an employer must be afforded to all other candidates on an equal basis.

Article VII D of the Collective Bargaining Agreement between the Local and the District does not require the District to allow a candidate to post campaign material on Union bulletin boards. The bulletin boards may properly be restricted to official Union notices. Local 118 will insist, though, that if an employer allows one candidate to post campaign material on a Union bulletin board, equal access must be granted to all candidates. Likewise, neither the released-time provision of the collective bargaining agreement nor any practice of allowing access to District property to Local Union business agents require the District to allow campaigning during working time.

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We do not believe that the Taylor Law requires an employer to modify its solicitation, access or union activity policies to accommodate campaigning for intra-union election campaigns. We do believe that the Taylor Law would prohibit the employer from discriminatorily applying its no-solicitation or access rules in a manner which favors or disfavors any individual candidate.

Notably, the Harren fax interprets the collective bargaining agreement and the Taylor Law. It does not recite or interpret the *Rules* with respect to use of union bulletin boards in the workplace.

Investigation showed that Hershey consulted with school district counsel and was advised that the collective bargaining agreement and board policy limited use of union bulletin boards to official postings of the union and barred posting of campaign material.

The protest contends that Harren's letter constituted an improper contribution to the Unity slate by advising the district that campaign postings on union bulletin boards were not protected by the collective bargaining agreement. We reject this contention.

"Campaign contribution" is defined as "any direct or indirect contribution of money or other thing of value where the purpose, object or foreseeable effect of that contribution is to influence, positively or negatively, the election of a candidate for Convention delegate or alternate delegate or International Officer position." *Rules*, Definition 5.

Harren did not make a campaign contribution to the Unity slate or any other candidate by reciting the local union's position to management on a provision of the collective bargaining agreement concerning use of union bulletin boards. The advice expressly sought equal treatment of all candidates, did not favor or disfavor any candidate or have the purpose, object or foreseeable effect of influencing the election.

Accordingly, we DENY this portion of the protest.

5. Preventing access to a Union meeting

On January 11, protestors Kenny and LaRocca attempted to attend a Teamsters Local Union 118 meeting at Greece Central School District ("Greece Central"). President Steve Mazza told the two that they were not welcome and that they would not be allowed to attend the meeting.

Mike Maynard, sergeant-at-arms for local union, told our investigator that the meeting was restricted to members who were Greece Central employees. The purpose of the meeting was to explain the merger between Local Unions 791 and 118 and to give Greece Central employees an opportunity to meet officers of Local Union 118. Maynard denied the protestors' entry because they did not work for Greece Central.

Toole told our investigator that the January 11 meeting was a quarterly meeting specifically set aside for the members employed at Greece Central and was not a general membership meeting. According to Toole, these meetings were originally set up when the group

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of employees voted to change affiliations and join Local Union 791 a few years ago. Toole stated that the meetings have always been for Greece Central employees only.

Toole claims that the protestors were allowed to remain on the premises and campaign but not allowed to enter the meeting. In addition, Toole stated the protestors remained in the area outside the meeting and subsequently mingled with members when the meeting was over.

Finally, Toole contends that it is the local union's established practice not to allow campaigning during any meetings. According to Toole, this practice held true at the January 11 meeting. Officers present who also were delegate candidates did not campaign during the meeting nor did they address the members concerning the upcoming election.

Article VII, Section 5(a)(1) of the *Rules* provides that “[n]o candidate may be denied access to any meeting of the Local Union to which he/she belongs as a member; however, the Local Union need not grant such candidate the opportunity to address the meeting for the purpose of campaigning unless a similar opportunity is granted to another candidate.”

This provision applies to all meetings of the local union, not merely general membership meetings. *Weronke*, P306 (January 31, 1996) (craft meeting). Although campaigning need not be permitted at such meetings – and we find that no campaigning occurred here – candidates are nonetheless permitted to attend meetings of the local union, whether general membership, bargaining unit, or craft, in part to insure that no campaigning takes place at the meetings.

Accordingly, we GRANT this aspect of the protest.

Remedy

When the Election Supervisor determines that the *Rules* have been violated, he “may take whatever remedial action is deemed appropriate.” Article XIII, Section 4. In fashioning the appropriate remedy, the Election Supervisor views the nature and seriousness of the violation as well as its potential for interfering with the election process.

We direct Local Union 118 to cease and desist from barring any candidate from attending any meeting of the local union, whether general membership, craft, or bargaining unit.

Any interested party not satisfied with this determination may request a hearing before the Election Appeals Master within two (2) working days of receipt of this decision. The parties are reminded that, absent extraordinary circumstances, no party may rely upon evidence that was not presented to the Office of the Election Supervisor in any such appeal. Requests for a hearing shall be made in writing, shall specify the basis for the appeal and shall be served upon:

Kenneth Conboy
Election Appeals Master
Latham & Watkins
885 Third Avenue, Suite 1000
New York, New York 10022
Fax: (212) 751-4864

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Copies of the request for hearing must be served upon the parties, as well as upon the Election Supervisor for the International Brotherhood of Teamsters, 1725 K Street, N.W., Suite 1400, Washington, D.C. 20007-5135, all within the time prescribed above. A copy of the protest must accompany the request for hearing.

Richard W. Mark
Election Supervisor

cc: Kenneth Conboy
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