

OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: LEEDHAM SLATE,)	Protest Decision 2006 ESD 330
)	Issued: July 24, 2006
Protestor.)	OES Case No. P-06-294-062306-HQ
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The Tom Leedham Strong Contracts Good Pensions slate filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2005-2006 IBT International Union Delegate and Officer Election ("*Rules*"). The protest alleged that Local Union 71 president Ted Russell violated the *Rules* by using union stationery and union funds to promote the Hoffa campaign and by endorsing the Hoffa campaign in his capacity as President.

Election Supervisor representatives J. Griffin "Griff" Morgan and Jeffrey Ellison investigated this protest.

Findings of Fact

Three slates and several independent candidates competed for the delegate and alternate delegate positions at Local Union 71. The candidates who were members of the Slate to Protect Your Stake won the March election. The Slate to Protect Your Stake campaigned as supporters of the Leedham slate.

After their election, members of the Slate to Protect Your Stake distributed a leaflet stating that their election sent a clear message to the leadership of Local Union 71 that it is time to get rid of James Hoffa as General President of the IBT. The leaflet repeated that the elected delegates supported the Leedham slate.

In early April 2006, in response to the Slate to Protect Your Stake's leaflet, local union president Russell created a petition/survey that stated: "We, the undersigned, due [sic] hereby request that the delegates to the 2006 National Convention support our choice of candidates for the General Presidency of the International Brotherhood of Teamsters." The petition/survey provided spaces for members to write their names and employers and to check a box next to the name of either James Hoffa or Tom Leedham. Russell and business agents of Local Union 71 distributed the petition/survey by hand to many stewards and a few members. The stewards and selected members were asked to have the petition completed by their co-workers. Russell and the business agents distributed the petition while visiting worksites on time paid by the local union. The petition was created and copied on Local Union 71 office equipment.

President Russell mailed a letter on local union letterhead dated June 9, 2006 to the local union's delegates advising them that Joint Council 9 shirts were available for them to wear to the IBT convention and requesting that they support General President James Hoffa at the convention. On the second point, Russell wrote the following:

The recent survey, which was sent to the stewards of our various companies, has been counted and it appears that the majority of our members, who chose to sign the survey, have requested that Local 71 delegates support General President James Hoffa at the Convention by a 4-1 margin. This survey was conducted as a result of the letter sent out by the TDU Slate stating their loyalty remained with

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the wishes of the membership and the fact that the TDU Slate did not carry a majority of the total ballots counted. As President of Teamsters Local Union 71, I am requesting that you respect the choice of the membership and support General President James Hoffa at the 2006 Convention.

Russell told our investigator that he spent only a small amount of time developing the survey, distributing it to the shop stewards at the employer facilities under the local union's jurisdiction, collecting and tabulating the results, and preparing the letter to the local union delegates. He estimated the total time expended at less than 2 hours.

The protestor complains that the petition survey and letter to the delegates violate the *Rules* as improper use of union resources to assist a candidate.

Russell asserts that the petition/survey was neutral on its face and did not suggest a choice to the members who completed it and, further, that Russell's tabulation and reporting of results to the local union's delegates was essentially a ministerial act and not an endorsement.

Analysis

The *Rules* prohibit contributions by a labor organization to any candidate. Article XI, Section 1(b)(3) of the *Rules* states:

No labor organization, including but not limited to the International Union, Local Unions and all other subordinate Union bodies, whether or not an employer, may contribute, or shall be permitted to contribute, directly or indirectly, anything of value, where the purpose, object or foreseeable effect of the contribution is to influence, positively or negatively, the election of a candidate... These prohibitions extend beyond strictly monetary contributions made by a labor organization and include contributions and use of the organization's stationery, equipment, facilities and personnel.

Article VII, Section 12(b) of the *Rules* provides that:

All Union officers and employees, if members, retain the right to participate in campaign activities, including the right to run for office, openly to support or oppose any candidate, to aid or campaign for any candidate, and to make personal campaign contributions. However, such campaigning must not involve the expenditure of Union funds. Accordingly, officers and employees (and other members) of the Union may not campaign on time that is paid for by the Union. Campaigning incidental to regular Union business is not, however, violative of this section. Further, campaigning during paid vacation, paid lunch hours or breaks, or similar paid time off is also not violative of this section. An endorsement of a candidate may be made by a Union officer or employee, but solely in his/her individual capacity. The Union or a Local Union as such or the General Executive Board or an Executive Board of a Local Union as such may not endorse or otherwise advance a candidacy, even if all members agree on the endorsement or candidacy.

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The Election Supervisor has previously held that conducting any poll that seeks "information that would be directly useful and relevant" to a candidate's campaign is equivalent to contributing to the campaign of said candidate; thus, a union-sponsored poll including a question asking whether members have favorable or unfavorable attitudes toward any candidate is considered a prohibited union contribution under the *Rules*. *Teamsters For a Democratic Union*, 2005 ESD 3 (July 15, 2005), citing *Giacumbo*, P-001 (September 21, 1995) *aff'd as modified*, 95 EAM 32 (November 1, 1995). In *TDU*, the Election Supervisor also noted that although the "overall purpose and scope of the poll pursues a legitimate union function," the inclusion of a single question asking members' opinions of presidential candidate Hoffa allowed the poll's results to be considered a campaign contribution.

We find that Russell used union funds, facilities, equipment and stationery to promote the Hoffa campaign. Specifically, we find that Russell was motivated to conduct the petition/survey by post-election campaign literature distributed by the winning slate of delegates and that he intended to develop evidence, even though informal and non-scientific, that he could use to attempt to show that the delegates' claim of mandate from the membership to support Tom Leedham was incorrect. The survey was distributed to the membership through union shop stewards who solicited responses, and the survey results were sent to the Local Union Convention delegation on Local Union letterhead over Russell's signature as Local Union president. While Russell was free to conduct a campaign-related survey on personal time and at personal expense, the *Rules* prohibited him from engaging in such campaign activity on time compensated by the union using union-provided materials and staff.

We further find that the Hoffa campaign received the benefit of Russell's improper use of union resources.

Accordingly, we GRANT this 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.

The Election Supervisor's chief responsibility is to insure "fair, honest, open and informed elections." Article I. Improper use of union resources to support a candidate constitutes a serious threat to a fair election.

The IBT convention has concluded, and candidates for International office have been nominated for the general membership ballot. Once delegate and alternate delegate elections have been completed, we are especially sensitive to improper use of union resources to support a candidate where the candidate receiving the support is standing for International office. We find that the improper use of union resources undertaken by Russell and Local Union 71 were intended to support a candidate for International office, James Hoffa.

We order the following relief with respect to Russell and Local Union 71:

1. We order Ted Russell and Local Union 71 to cease and desist from using union funds, facilities, equipment and stationery to provide support for any candidate in the International officer election.
2. We further order Ted Russell and Local Union 71 to cease and desist from using union resources to endorse any candidate for International office.
3. We order Ted Russell to sign and post on all union bulletin boards under the jurisdiction of Local Union 71 the notice attached to this decision and maintain such posting until November 30, 2006. Such posting must be completed within 3 working days of receipt of this decision; immediately upon completing the remedy, the local union shall supply an affidavit to our office documenting that it has completed this aspect of the remedy.
4. To remedy the improper use of union resources Russell and Local Union 71 committed to James P. Hoffa's candidacy for General President and to restore an even playing field, we order Local Union 71 to pay to the full cost of duplicating and mailing to the full membership of Local Union 71 a one-page, two-sided campaign flyer to be supplied by the Leedham campaign. Such flyer shall be mailed at any reasonable time selected by the Leedham campaign. Such mailing shall be conducted by first-class mail. However, if the local union possesses a bulk mail permit that may be used for first-class pre-sort delivery, it shall permit the Leedham campaign use of the bulk mail permit. The local union shall supply its complete membership list, current as of the date it supplies it, to the mail house selected by the Leedham campaign in a form (label or electronic) designated by the Leedham campaign and, if first-class pre-sort delivery is to be used, in zip code order. The local union shall tender payment of the costs identified in this paragraph within 2 working days of receipt of documentation showing duplication and mailing costs. The Leedham campaign shall be permitted reimbursement for the costs of printing (including plate-making, 4 colors maximum), ink, paper and envelope stock, folding, stuffing, and postage. The Leedham campaign shall be responsible for the art and typesetting costs associated with the flyer. We order this remedy pursuant to Article XIII, Section 4(h), which authorizes the Election Supervisor to "requir[e] the Union to mail or otherwise distribute, at its own expense, candidate campaign materials," and Section 4(m), under which the Election Supervisor may "requir[e] the Union to provide candidate(s) with specific goods or services."

We order the Hoffa campaign to cease and desist from receiving improper contributions of union resources.

We caution all candidates and slates that improper receipt of union contributions constitutes a serious threat to the integrity of the election process. Violation may result in application of the full range of remedies specified in Article XIII, Section 4, including a requirement that the candidate or slate that receives the improper contribution repay the monetary value of the contribution, and/or disqualification of the candidate or slate from seeking International office.

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

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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

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. 20006-1416, 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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RICHARD W. MARK
Election Supervisor

**NOTICE OF ALL MEMBERS OF
TEAMSTERS LOCAL UNION 71
FROM ELECTION SUPERVISOR RICHARD W. MARK**


The Rules for the 2005-2006 IBT International Union Delegate and Officer Election ("Rules") prohibit use of union resources to support or oppose any member's candidacy for International office. The Rules also prohibit a union official or employee from campaigning while on union-paid time.

The Election Supervisor will not permit any violation of such Rules.

The Election Supervisor has determined that Ted Russell and Local Union 71 violated the Rules when, while on union-paid time and using union-paid supplies, equipment and staff, he developed, circulated, collected, and tabulated the results of an informal, non-scientific survey of members with respect to their preference for General President, and then requested the duly elected local union delegates to the IBT convention to vote at the convention in accordance of his findings. The Election Supervisor has determined that Russell's conduct improperly used union resources for a campaign purpose.

Local Union 71 does not endorse and is not permitted to endorse any candidate or slate of candidates for International office.

Any protest you have regarding your rights under the Rules or any conduct by any person or entity which violates the Rules should be filed with Richard W. Mark, Election Supervisor, 1725 K Street, N.W., Suite 1400, Washington, D.C. 20006, telephone: 888-IBT-2006, fax: 202-454-1501, email: electionsupervisor@ibtvote.org.



Richard W. Mark
Election Supervisor

Date: July 24, 2006

This is an official notice prepared and approved by Richard W. Mark, Election Supervisor for the International Brotherhood of Teamsters. It must remain posted for 30 consecutive days and must not be defaced or covered up.

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