

June 24, 2010

Gegare came into possession of the May 25 fax on May 26 and timely protested it on May 28. That protest resulted in our decision in 2010 ESD 1, issued May 31. On June 3, Gegare filed the instant protest concerning the same Hoffa-Keegel 2011 fax. He alleged in the second protest that the campaign and its operatives violated the *Rules* and the LMRDA by —

— [f]alsely and fraudulently claiming, by the use of an unauthorized signature stamp or other replica of an alleged candidate's signature, that certain individuals are supporting, or running for election with, the Hoffa campaign. Signature stamps were used improperly from prior campaigns without the consent or support of the persons whose signatures purportedly appear on the Hoffa slate's recent campaign material.

Gegare told our investigator that, when he saw the name and signature of Henry Perry on the letter, he contacted Perry to determine whether Perry had signed the letter. Gegare reached Perry on June 1 and learned from Perry that he had not signed the letter. Gegare filed the protest two days later on June 3; we acknowledged receipt of and docketed it on June 4.

Perry was elected International trustee in 2006 as a member of the Hoffa 2006 slate and currently holds that office. He confirmed to our investigator that he did not sign the May 25 letter or authorize that his name and signature appear on it. He stated further that he did not know that the letter had been prepared or sent until Gegare phoned him and told him about it.

Perry was firm with our investigator that he did not endorse and would not have endorsed the Hoffa-Keegel 2011 slate in May 2010 because earlier that month he was told by two individuals (both of whom are aligned with the slate and authorized use of their signatures on the May 25 letter) that he would not be permitted to run for re-election with the slate.

Tyson Johnson, IBT Southern region vice-president, was identified by Perry as the first individual to tell him he was not on the slate. Both Perry and Johnson told our investigator that they had spoken while at the Unity conference in Las Vegas, but gave different versions of the substance of their discussions. According to Perry, at a meeting held May 10 at the site of Unity conference, Johnson told him that General President James Hoffa had decided that Perry would not be on the Hoffa-Keegel 2011 slate. According to Perry, Johnson stated that Hoffa's reason for replacing Perry on the slate was that Perry's slate had lost its local union delegate election in the 2006 election cycle. Perry said Johnson further told him that the Hoffa campaign had learned that a full slate of candidates had been formed out of YRC, an employer in Perry's local union, to challenge Perry in the delegate election and that the Hoffa campaign had doubts Perry would win that election. Johnson told Perry that the campaign wanted Perry to resign his International trustee position to allow the vacancy to be filled by an appointee who would run with the slate in the 2011 election. In exchange for this action by Perry, Johnson stated that Perry's salary as trustee would be continued through 2011 provided he campaigned for the slate, raised money for it, and circulated accreditation petitions on its behalf. Perry told our investigator that he was surprised by Johnson's message to him. He said he conveyed his dissatisfaction directly to Johnson, pointing out that he was the top vote-getter for International office in 2006, out-polling Hoffa himself, and further that he had won every election for local union office since his first attempt in 1986 and believes he lost the 2006 delegate election in his local union not because of personal unpopularity but because he was unable to persuade his members to support Hoffa.

June 24, 2010

Perry said that Johnson urged him to speak directly with Hoffa about his placement on the slate. Perry said he did so by telephone on May 18. According to Perry, Hoffa stated that Perry was off the Hoffa-Keegel slate for the coming election and should resign his International officer position now so that a replacement could be appointed who would then run for the seat as a member of the Hoffa-Keegel slate. Perry said that Hoffa asked him to support the slate nonetheless, circulate accreditation petitions and raise campaign contributions on its behalf, and then retire. Perry said he told Hoffa that he could not accept what Hoffa was proposing and that he intended to run for re-election as International trustee, whether with the Hoffa slate or otherwise.

Perry said that Johnson's message to him about being off the slate was especially surprising for its timing. The evening before he spoke with Johnson, Perry had attended a campaign function for Hoffa-Keegel 2011. During that event, Hoffa asked all the candidates who were running with the slate to join him and Thomas Keegel on the stage. Perry said that Christy Bailey, a Hoffa-Keegel 2011 campaign manager, told him to go up on stage and he did so. Bailey's statement indicated to Perry that he would be on the slate for the 2011 election. That same night, Perry said that Johnson asked to meet with him the next morning for 5 minutes backstage in the conference hall to discuss a matter that Johnson did not specify at the time he requested the meeting. When Perry appeared at the meeting Johnson requested, which occurred the second morning of the conference, Johnson told him he was off the slate.

Johnson acknowledged that he had a conversation with Perry at the Unity conference but rejected Perry's version of it. Johnson told our investigator that the conversation occurred backstage on the morning of the first day of the Unity conference as all the members of the International Executive Board waited to be introduced to the conference. During that conversation, Johnson said he told Perry that he had heard Perry intended to retire. Johnson said that Perry denied any intention to retire and stated that he would run for re-election as International trustee. Johnson said he then asked Perry how things looked for the officer and delegate elections in Perry's local union. Perry replied that things looked fine and that he was confident that his slates would be victorious. Johnson told us he asked these questions about the elections in Perry's local union because the local is situated in Johnson's region and he generally is interested in whether there will be continuity in local union leadership in his region. Johnson said that nothing further was discussed. Johnson generally denied discussing the 2011 election and specifically denied telling Perry that Perry was off or would be off the Hoffa-Keegel 2011 slate.

On June 1, 2010, about 3 weeks after Perry stated Johnson told him he was off the slate (and 2 weeks after Perry's reported conversation with Hoffa to that effect), Gegare alerted Perry that his name and signature appeared on the May 25 campaign letter. In response to this report, Perry contacted Todd Thompson of the Hoffa-Keegel 2011 campaign. In separate interviews with our investigator, Perry and Thompson each said that when Perry called he told Thompson that he had not signed the letter or authorized that his name and signature be used; Perry asked how his signature had been added to the letter. Thompson apologized to Perry for failing to contact him; according to Thompson, Perry said, "That's ok." Thompson then told Perry that the campaign had his signature on file from the 2006 election and simply lifted it for use on the May 25 letter.

June 24, 2010

Perry and Thompson have different accounts of the substance of Perry's call asking about the May 25 letter. Thompson stated that when he apologized and Perry said, "That's ok," Perry then said that the campaign's use of his name and signature on the May 25 letter was acceptable but that it should not be done again without his express authorization. Perry told us that Thompson's statement in this regard was untrue. Perry said his "That's ok" statement was mere gentlemanly acceptance of Thompson's apology and nothing more. He said that he did not ratify use of his facsimile signature in the May 25 support letter either expressly or implicitly.

Regarding the preparation of the May 25 letter, Thompson conceded that Perry's signature was placed on the letter without authorization. Thompson told our investigator that he prepared the May 25 campaign letter in collaboration with Christy Bailey. Thompson said that he and Bailey divided the list of names between them and contacted the persons by telephone or email to advise that a support letter was being sent and that their signatures would be affixed to the letter. Thompson said he already possessed the signatures in .pdf form of the persons who ran on the Hoffa 2006 slate. For the persons "signing" the letter who had not been part of the 2006 slate, the campaign asked that they sign their names and fax them to an efax account the campaign maintained, which converted the incoming faxes to .pdf documents. Thompson then made .jpg files of the signatures and affixed the digital image of each signature above the corresponding person's name on the May 25 letter. Thompson said that all signers he and Bailey contacted authorized use of their name and signature; one asked to hear the content of the letter before giving his assent but gave his authorization after it was read to him. Thompson said that neither he nor Bailey contacted Perry for his consent. Thompson explained that Perry "fell through the cracks" and that the failure to contact him was an oversight.

In resolving the conflict between the statements of Perry and Thompson over whether Perry ratified the use of his signature, we credit Perry. We do so because the motivation for Perry's call to Thompson was that he had been told by Johnson and Hoffa that he was not on the Hoffa-Keegel 2011 slate, yet the campaign had sent out a letter over his signature (among others) endorsing and supporting that slate and urging recipients to support it. Perry was surprised and upset that he had been removed from the slate for reasons he believed were insubstantial and, under such circumstances, he did not intend to support the slate that had rejected his candidacy. Given Perry's motivation, we find it implausible that he would tell Thompson after the fact that the campaign's unauthorized use of his endorsement was nonetheless acceptable. Had Perry agreed with the use of his signature, he would not have any reason to call.

Analysis

Hoffa-Keegel 2011 raises several procedural and one substantive defense to the protest. Procedurally, it requests that the protest be dismissed on any or all of the following grounds: that it is untimely filed, that it is filed by Gegare when the campaign contends the "real party in interest" is Perry, and/or that the protest is too indefinitely stated to be investigated and decided. Before turning to the merits of the protest, we dispense with these procedural arguments in the order presented.

Article XIII, Section 2(b) of the *Rules* requires that pre-election protests "be filed within two (2) working days of the day when the protestor becomes aware or reasonably should have become aware of the action protested or such protests shall be waived." Although the time limitation is considered prudential, not strict, we have denied protests as untimely filed where no

June 24, 2010

justification exists for the delayed filing. *White*, 2006 ESD 104 (February 27, 2006), *aff'd*, 06 EAM 15 (March 6, 2006); *Milligan*, 2001 EAD 156 (February 12, 2001).

Here, Hoffa-Keegel 2011 correctly notes that protestor Gegare had possession of the support letter that serves as the basis of this protest on or before May 28, given that he filed his first protest about it on that date. Therefore, the campaign argues, the second protest filed on June 3 is untimely by several working days. This argument does not deal with when and how Gegare learned information he used as a basis for the protest. When those facts are examined they show the protest was timely filed. The gravamen of Gegare's second protest is the action of Hoffa-Keegel 2011 "falsely and fraudulently claiming ... that certain individuals are supporting, or running for election with, the Hoffa campaign." Gegare could not know from the document alone whether any of the signatures had been authorized. Perry told Gegare on June 1 that Perry had neither signed the letter nor authorized the use of his signature on it. The time limit for the instant protest thus commenced on June 1, when Gegare learned the basis for the protest, and his filing on June 3 was therefore timely. We further find that Gegare did not unreasonably delay in contacting Perry. He reached Perry on the first business day following the Memorial Day weekend and the first business day after the date he filed his initial protest. Under these circumstances, we find the instant protest timely filed.

Hoffa-Keegel 2011's next argument – that the protest should be dismissed because the real party in interest is Perry, not Gegare – similarly has no merit. Standing to file a protest under the *Rules* is granted broadly to "[a]ny member ... alleging noncompliance with these Rules." Article XIII, Section 1. Although the *Rules* limit the right to appeal our decisions to the protestor, the union involved, any adversely affected candidate or any other person or entity adversely affected by the decision, the *Rules* do not require that a protestor be "adversely affected" by the alleged violation in order to have standing to protest. Even were Hoffa-Keegel 2011's argument correct, Gegare as a candidate for International office could colorably claim that he is harmed by Hoffa-Keegel's unauthorized appropriation of Perry's endorsement, for such action publicizes to the electorate or some segment thereof that Perry has endorsed Gegare's opponent and not Gegare (or someone else). Accordingly, even were a standing requirement as proposed by Hoffa-Keegel 2011 part of the *Rules*, which it is not, Gegare would have such standing to file the instant protest.

Finally, we reject Hoffa-Keegel 2011's claim that the protest is too indefinite to be investigated and decided. Article XIII, Section 2(d) requires that a protest identify the person or entity who is the subject of the protest and provide "a clear and concise written statement of the alleged improper conduct." Here, Gegare's protest, prepared by counsel, satisfies these requirements. It alleges that the Hoffa campaign, Christy Bailey and Todd Thompson violated the *Rules* by "circulating false and misleading campaign material" that "[f]alsely and fraudulently claim[ed], by the use of an unauthorized signature stamp or other replica of an alleged candidate's signature, that certain individuals are supporting, or running for election with, the Hoffa campaign." The protest elaborates that "[s]ignature stamps were used improperly from prior campaigns without the consent or support of the persons whose signatures purportedly appear on the Hoffa slate's recent campaign material." On its face, this statement is sufficient to place the subjects of the protest on notice as to the conduct being protested. As borne out by the investigation, the campaign's counsel and Thompson demonstrated that they were aware that the protest concerned use of Henry Perry's name and a facsimile of his signature on the May 25 support letter without his knowledge, authorization or approval.

June 24, 2010

Having considered and disposed of the procedural objections to the protest, we now turn to the merits. The May 25 support letter was an appeal from 24 named International officers and 1 candidate for International office asking Hoffa-Keegel 2011 slate supporters to circulate accreditation petitions for the slate's candidates. That the individuals whose names and signatures appear on the letter endorse and support the slate is the message conveyed and intended by including their names and signatures.

The *Rules* protect the right of all union members "to participate in campaign activities, including the right to run for office, to support or oppose any candidate, to aid or campaign for any candidate, and to make personal campaign contributions." Article VII, Section 12(a). Implicit in this guarantee of rights to participate in campaign activities is the right to refrain from such activities. *Jackson & Trupiano*, 2006 ESD 124 (April 17, 2006), *aff'd*, 06 EAM 36 (May 11, 2006).

Hoffa-Keegel 2011, Thompson and Bailey violated Henry Perry's right under Article VII, Section 12 to refrain from supporting a candidate and from aiding and campaigning for a candidate by using his signature without authorization on the May 25 letter to express support for the Hoffa-Keegel 2011 slate. Although Thompson had Perry's signature "on file" from the 2006 election, Perry had given his signature and authorized its use only for 2006 election. The campaign, Thompson and Bailey were not permitted to use his signature on the May 25 letter without obtaining his new and express authorization to do so. By using the signature without such authorization, the respondents infringed on Perry's personal right to withhold support from a candidate or slate. *Cf.* Election Office precedent where a signature has been used without authorization (*e.g.*, *Shanahan*, P397 (February 6, 1996), where the Election Officer found that the unauthorized signing of another's signature on slate declaration form invalidated the form) with cases where the *authorized* signing of another's name has been permitted (*McNeely*, 2001 EAD 254 (March 22, 2001), and *Gale*, 2006 ESD 125 (March 3, 2006), *aff'd*, 06 EAM 21 (March 10, 2006)).

The campaign, Thompson and Bailey also violated Perry's rights by obtaining an involuntary campaign contribution from him. The *Rules* define "campaign contribution" 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." Definition 5 (emphasis supplied). Expressly included in this definition of "campaign contribution" is "[a]n endorsement or counter-endorsement by an individual, group of individuals, or entity." *Id.*, subsection f. Just as it is the personal right of Perry or any other member to contribute or refrain from contributing money in support of a candidate or slate, it is the personal right of Perry or any other member to give an endorsement to or withhold it from a candidate or slate. The campaign, Thompson and Bailey publicized Perry's endorsement of the Hoffa-Keegel 2011 slate without obtaining the endorsement from him. Respondents could no more take the endorsement from Perry without his authorization than they could take money from him without his consent.

In reaching these conclusions, we need not resolve the contradiction in evidence between Perry and Tyson Johnson, nor need we obtain General President Hoffa's account of Perry's communication with him. The undisputed fact in this case is that Hoffa-Keegel 2011, Thompson and Bailey used Perry's name and signature on the May 25 letter without his authorization.

June 24, 2010

Perry's version of his conversations with Johnson and Hoffa explain his motivation for objecting to the use of his name and signature in the letter; contradiction from other witnesses would not change the agreed fact that respondents used Perry's name and his signature (previously provided for another purpose) to convey an endorsement he had not given.

Our general refusal to regulate the content of campaign literature (*see, e.g., Sandford*, 2006 ESD 142 (April 3, 2006) (the *Rules* are not intended to "ensure the accuracy and truth of campaign materials") does not shield respondents' conduct from our enforcement action. Nor does this decision indicate that we will review the content of campaign literature to determine whether it is deceptive or untruthful. Rather, we distinguish today's decision from that rendered in *Jackson and Trupiano*, 2006 ESD 124 (April 17, 2006), *aff'd*, 2006 EAM 36 (May 11, 2006), where members asserted that they had been misled into appearing in a photograph that subsequently was used in a campaign flyer for a slate they did not support. As the Election Appeals Master noted in affirming our decision not to regulate the content of the flyer, "the photographed members ... are not quoted or explicitly identified as ... slate supporters, ... the photograph itself contains no political paraphernalia or sloganeering, and ... the caption ... refers to union business only." In contrast, the use of Perry's name and signature on the May 25 letter in this case expressly adopts the campaign message of the letter, explicitly identifies him as a slate supporter, and conveys to the reader perhaps in the most persuasive manner possible in print – by the use of Perry's signature – that Perry endorses and supports the slate.

Our decision is limited to the particular, and perhaps unique, circumstance here that a facsimile signature was used, concededly without authorization, to convey an endorsement. Thompson and Bailey reportedly obtained authorization for all of the signatures used on the May 25 letter except for Perry's, but they used Perry's signature anyway. The *Rules* expressly regulate campaign contributions, and a contribution (including an explicit endorsement) cannot be exacted without the donor's knowledge and consent.

Accordingly, we GRANT 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 the Hoffa-Keegel 2011 campaign, Todd Thompson and Christy Bailey to cease and desist from using signatures they, and each of them, have in their possession to endorse or publicize the endorsement of a candidate or slate, unless the person whose signature it is gives express authorization for such purpose.

We further direct the Hoffa-Keegel 2011 campaign, Thompson and Bailey to fax the attached notice to the recipients of the May 25 fax within 3 business days of receipt of this decision and provide affidavit proof of compliance to our offices within 1 business day thereafter. We order the faxing of this notice even though the notice the campaign faxed as part of the remedy in *Gegare*, 2010 ESD 1 (May 31, 2010), *aff'd*, 10 EAM 1 (June 14, 2010), requested that recipients of the May 25 letter discard that letter and the balance of the May 25 fax

Gegare, 2010 ESD 4

June 24, 2010

transmission. Given the breadth of the distribution of the May 25 fax transmission, there is no practical means to determine whether the faxed letter was retained or discarded by each recipient. The notice ordered to be faxed in this decision is intended to remedy the misappropriated endorsement of Perry, and can best be accomplished by transmitting the notice to the same fax numbers to which the May 25 transmission was sent.

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, NY 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, 1801 K Street, N.W., Suite 421 L, Washington, D.C. 20006, 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
2010 ESD 4

Gegare, 2010 ESD 4
June 24, 2010

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Richard W. Mark
Election Supervisor

TO: All Local Unions and Joint Councils of the International Brotherhood of Teamsters

FROM: Richard W. Mark, Election Supervisor

The Rules for the 2010-2011 IBT International Union Delegate and Officer Election (“*Rules*”) protect the right of all members to participate in campaign activities, including the right to run for office, to support or oppose any candidate, to aid or campaign for any candidate, and to make personal campaign contributions. The *Rules* also protect the right of all members to refrain from campaign activities and to withhold support or aid from any candidate.

The *Rules* further protect the right of all members to make campaign contributions to a candidate or slate, or to refrain from making such contributions. The *Rules* define campaign contributions broadly to include “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. Endorsements of candidates or slates are campaign contributions under the *Rules*.”

The Election Supervisor will not tolerate violation of the *Rules*.

The Election Supervisor has determined that the Hoffa-Keegel 2011 campaign and Todd Thompson and Christy Bailey, its operatives, violated the *Rules* on May 25 by faxing a letter to all IBT local unions and joint councils that reproduced the signature of Henry Perry, indicating his support for and endorsement of the Hoffa-Keegel 2011 slate. The campaign, Thompson and Bailey used an old digital image of Perry’s signature on the May 25 letter without his authorization to convey that he endorsed and supported the Hoffa-Keegel 2011 slate when he did not.

The Election Supervisor has issued this decision in *Gegare*, 2010 ESD 4 (June 23, 2010), the full text of which may be viewed at <http://www.ibtvote.org/protests/2010/2010esd004.htm>.

Any protest you have regarding your rights under the *Rules* or any conduct by any person or entity that violates the *Rules* should be filed with Richard W. Mark, 1801 K Street, N.W., Suite 421L, Washington, D.C. 20006, telephone: 877-317-2011, fax: 202-429-6809, email: electionsupervisor@ibtvote.org.