

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

IN RE: FRED ZUCKERMAN and)	Protest Decision 2010 ESD 5
FRED GEGARE,)	Issued: June 28, 2010
)	OES Case No. P-006-060810-NA
Protestors.)	
)	
)	
)	

Fred Zuckerman and Fred Gegare, candidates for International Union office, filed a pre-election protest pursuant to Article XIII, Section 2(b) of the Rules for the 2010-2011 IBT International Union Delegate and Officer Election (“*Rules*”). The protest alleged that the Hoffa-Keegel 2011 campaign violated the *Rules* by circulating campaign flyers inside hearing rooms at a joint labor-management grievance panel event.

Election Supervisor representative Maureen Geraghty investigated this protest.

Findings of Fact

National grievance hearings were held for carhaul, UPS, and UPS Freight grievances at the Hilton Hotel in Providence, Rhode Island on June 8, 2010. By contract, these grievance hearings are conducted before panels comprised of equal numbers of union and management members. For each grievance heard at national grievance meetings, union and management representatives present evidence and argument to the assigned panel, which then decides the grievance. A typical national panel will hear multiple grievances involving multiple employers, local unions and grievants each day it sits. The panel meetings are not open to the public, nor are they open to employers or IBT members who do not have business before the panels.

For the national panel meetings that took place on June 8, representatives of labor and management arrived at least by June 7 if not earlier to prepare their respective cases and to determine the order of presentations. Eight panels, each with its own hotel conference room, were devoted to pending UPS grievances; two panels, designated panel A and panel B, were to hear carhaul grievances. All of these conference rooms were situated on the second floor of the Providence Hilton.

In the week before the national meetings, Sean O’Brien, secretary-treasurer of Local Union 25 and president of Joint Council 10, and Joe Bairos, secretary-treasurer of Local Union 251, planned a fundraiser for Ken Hall, Ken Wood, and the Hoffa-Keegel 2011 slate to coincide with the panel meetings. They jointly decided to hold the event in a ballroom of the Providence Hilton in the evening on June 8 and to charge \$100 admission.

O’Brien had primary responsibility for publicizing the event. He made 200 copies of a single-page campaign flyer announcing the event at Staples on June 7 and organized a contingent of local union representatives to distribute them the next day to those attending the panel meetings. The flyer was headed with the Hoffa-Keegel 2011 campaign logo and read:

June 28, 2010

Join us in a 2011
Campaign Fundraising Event for Ken Hall
and Ken Wood!

Teamsters Vice Presidents Ken Hall and Ken Wood* cordially invite you to attend a campaign fundraiser in support of the Hoffa Keegel 2011 Slate.

Location: North Ballroom
Date: Tuesday, June 8th, 2010
Time: 6:00 p.m.
Ticket amount: \$100.00

Thank you for your continued support in support of our campaign.
Make checks payable to Hoffa Hall 2011.

Attention: Under the Election Rules, the campaign may accept general fund contributions only from active IBT members and their immediate families. IBT members who are also employers may only make contributions from their personal funds. No member may contribute more than \$2,000 for use in the International Officers election.

*Title used for identification purposes only

Around 7 a.m. on June 8, O'Brien met Steve South and George Slicis, business agents from his local union who had responsibilities at the UPS panel meetings, and gave each about 100 flyers to distribute, retaining some for himself. O'Brien stated that he met both men in the Hilton parking lot. South said he met O'Brien in the first floor lobby of the hotel and that Slicis met them there a short time later before all three went to the second floor lobby area adjacent to the elevators and stairway that attendees would use to access the panel meetings. Slicis said that he was the last to arrive at 7 a.m. and that he first saw O'Brien and South when he came up to the second floor lobby area of the hotel. When giving the flyers to South and Slicis, O'Brien said he cautioned them to distribute the flyers to IBT members only and not to place them in meeting rooms.

South and Slicis distributed their flyers in the second floor lobby. Slicis told our investigator that he and South passed out flyers from about 7:15 a.m. until shortly before 8:00, when he and South both left to attend a UPS national bargaining strategy session. In contrast, South said that he and Slicis distributed flyers for an additional hour until 9:00, when they went to panel meetings.

Between 7:15 and 7:30 a.m., O'Brien saw Joe Bairos, the co-organizer of the fundraiser, and gave him flyers for the event in the second floor lobby where O'Brien was watching South and Slicis distribute flyers. In contrast to O'Brien's evidence, Bairos said O'Brien gave him a small stack of flyers when he met O'Brien in front of the entrance to the hotel, where O'Brien was standing alone.

Bairos was present at the national panel meetings as chair of carhaul panel B. According to O'Brien, Bairos said he would give the flyers to the "carhaul guys." Unlike the instructions

June 28, 2010

O'Brien said he gave South and Slicis about distributing the flyers (IBT members only; don't place in conference rooms), O'Brien conceded he did not give Bairos any instructions.

Bairos told our investigator that he wanted to make the literature available in the hotel area where carhaul members could access it. He said that at about 7:30 a.m. he placed the literature on small end tables and coffee tables in the public hallways outside the carhaul panel A conference room (designated by the Hilton as the "Boardroom") and the carhaul panel B conference room (designated the "Renaissance" room). Bairos denied placing the flyers inside the conference rooms. Bairos said he attended the UPS bargaining strategy meeting at 8:00 a.m.

Protestor Zuckerman, who serves as IBT carhaul director, attended the national carhaul panel meetings as chair of carhaul panel A. After attending a 7:00 a.m. breakfast meeting with IBT staff attorney Ed Gleason and the 8:00 a.m. UPS bargaining strategy meeting, Zuckerman climbed the stairs to the second floor to make his way to the panel A conference room. He observed 3 campaigners distributing flyers in the second floor lobby. He then entered the panel A conference room (the Boardroom) at about 8:50 a.m. The Boardroom was set up with a large rectangular table with 14 to 15 chairs arranged around its perimeter. Zuckerman said that a pad of paper and a pen provided by the hotel were at each seat; in addition, a copy of the Hoffa-Keegel 2011 campaign flyer was at nearly every place around the table.

Zuckerman's reaction was immediate. He announced to the management and union representatives in the room that it was improper to have campaign literature in the panel room. He took several photos of the flyers on the conference table and in the refreshment table rack and then he picked up the flyers. He then went next door to the Renaissance conference room where panel B grievances were to be heard and found the same situation: campaign flyers at nearly every place around the assembled tables. In addition, a refreshment table furnished with a coffee urn and cups was set up on one wall of the conference room. This table also included a small literature stand used by the hotel to hold its room service menu. Zuckerman said that a stack of the Hoffa-Keegel 2011 flyers was sitting in the literature stand. He took more photos and picked up the flyers.

IBT staff attorney Gleason, who entered the Boardroom with Zuckerman, corroborated Zuckerman's account. He said that Bairos and several other individuals were already in the room. Gleason observed campaign flyers at the seats around the conference table and described the placement of the flyers as "place settings" around the table. Gleason then saw Zuckerman pick up the flyers.

Joe Smith, principal officer of Local Union 326, was present at the national carhaul panels to present a grievance to panel B. He entered the Renaissance conference room at 8:55 a.m. and saw "3 or 4 random scattered flyers laying on the tables," not lined up with chairs and not at every chair. He said that a few seconds after he arrived, Zuckerman came in the room and began taking photos. Zuckerman said words to the effect that "This is improper. You can't have campaign literature in the grievance room." When Smith first entered the room, Bairos was already present.

Jim Osner, an employer chair of carhaul panel A, said he arrived at the Boardroom at 9:00 or 9:05 and overheard Zuckerman and others discussing that campaign literature had been left in the room. Osner did not see any flyers in the room.

June 28, 2010

Kelly Mulligan, an IBT employee who serves as office manager for carhaul, told our investigator that she arrived at the Renaissance room (panel B) at 9:00 a.m. and saw no campaign literature; she then checked the Boardroom (panel A) with the same result.

Mike Darner, recording secretary of Local Union 957, served as sergeant-at-arms for the carhaul panels. In this capacity, he is responsible for insuring that panel rooms are properly set up and that representatives and witnesses are ready when their cases are called. The panel B grievances were initially to be heard in the Executive conference room on the first floor of the Hilton. When Darner learned this, he asked hotel staff to move the meeting to the second floor so that the carhaul panels would meet in adjacent rooms. This was accomplished about 8:40 a.m. Before the move from the Executive room, Darner said that he checked the room, which was unoccupied, and saw no campaign flyers in it. When he left the Executive room to speak with hotel staff about moving the meeting, he saw Bairos and Bill Alexander walking toward the room; he told them he was working on getting the meeting moved and would let them know if he was successful.

Alexander, recording secretary of Local Union 355, attended the carhaul panels as a panel B committee member. He told our investigator that he arrived at the Executive conference room shortly after 8:00 and sat there reading his newspaper. When he arrived, there was no campaign literature on the tables. Alexander said that others trickled into the room between 8:05 and 8:40. When Darner announced at 8:40 that the meeting was moved from Executive to Renaissance, Alexander said he gathered up his papers to make the move. At this point, he noticed 4 or 5 campaign flyers on the table; he said that he and Darner gathered them up and took them upstairs to Renaissance. Alexander denied knowledge of how the flyers arrived in Executive or seeing anyone bring them in. When Alexander arrived in Renaissance, he slid the 4 to 5 flyers he had collected in Executive around the table to other places. Shortly after he did so, Zuckerman came into Renaissance and began taking photos.

Darner emphatically denies that he saw flyers in the Executive room or collected them with Alexander, as Alexander stated. Darner also stated that Bairos and Alexander were the only ones in Executive when he announced that the meeting had moved to Renaissance.

After taking the photographs, Zuckerman removed the flyers from the rooms, and none remained afterwards. While the duration of the placement is not clear, the chronology suggests that flyers were in the rooms for at least ten minutes. Further, it is unclear how many individuals were exposed to the flyers in the carhaul panel hearing rooms. There is direct evidence evidence of two to six people possibly seeing the literature, but other representatives of employers or the union may have been in the rooms while the flyers were displayed.

No allegation was made or evidence found that campaign flyers were distributed in the UPS panel rooms.

Analysis

The protest alleges that Hoffa-Keegel 2011's distribution of the campaign flyer inside carhaul panel hearing rooms violated Article VII, Section 12(c) of the *Rules*, which states in relevant part:

June 28, 2010

Union funds, facilities, equipment, ... etc. may not be used to assist in campaigning unless the Union is reimbursed at fair market value for such assistance, and unless all candidates are provided equal access to such assistance and are notified in advance, in writing, of the availability of such assistance.

Hoffa-Keegel 2011 argues that flyers that appeared in Renaissance, the carhaul panel B conference room, were brought in by individuals who received them as the result of permissible leafleting by O'Brien, South and Slicis; in such case, the campaign argues for no *Rules* violation. However, the campaign concedes that Alexander may have brought flyers into Renaissance when he moved there from Executive; in such event, the campaign contends that Alexander's action is not attributable to it because Alexander was merely a campaign supporter, not an agent. With respect to Boardroom, the panel A conference room, the campaign argues that Zuckerman himself or "his minions" (as characterized by campaign counsel) planted the flyers there so he could take photos to support a protest.

We find that flyers were placed in Boardroom and Renaissance by persons acting in support of Hoffa-Keegel 2011. We credit the evidence of protestor Zuckerman, IBT staff attorney Gleason, and sergeant-at-arms Darner that the flyers were placed around the conference tables at many (but not all) of the unoccupied seats for viewing by persons who entered and would enter the conference rooms to transact official union and employer business. We find that Alexander brought some of the flyers into Renaissance when he moved there from Executive. We find that Bairos, an organizer of the fundraiser who had told O'Brien that he would get the flyers to the "carhaul guys," was present in both conference rooms at various times before 9:00 a.m. when the flyers were laying on the tables; accordingly, he at least had knowledge of the presence of the flyers in the room if he did not place them there himself. We rely on the statements of Zuckerman, Gleason and Darner to make these findings; we find that the photos Zuckerman took corroborate the evidence these witnesses provide. We also take Alexander's statement that he brought the flyers from Executive to Renaissance as an admission against interest; we reject his claim that Darner assisted him in this regard as not credible. Finally, we rely on a photo Zuckerman took to show the campaign flyers in the literature rack on the refreshments table in Renaissance.

This evidence defeats Hoffa-Keegel 2011's assertion that the flyers found in the panel hearing rooms were brought in one-by-one by individuals who had received them as the result of permissible leafleting by O'Brien, South and Slicis. That the flyers were found at unoccupied seats and in the literature rack undercuts the claim that they were carried in by individual recipients who subsequently left them unattended in the hearing rooms.

Hoffa-Keegel 2011 presented no evidence to substantiate its contention that protestor Zuckerman planted the flyers. Zuckerman's own statement that he was occupied with the breakfast meeting with IBT staff attorney Gleason and then the UPS bargaining strategy meeting before first arriving at Boardroom a few minutes before 9:00 a.m. is credible and unchallenged. Gleason independently corroborated Zuckerman's factual account. On that evidence, we reject Hoffa-Keegel 2011's speculative claim.

In assessing the import of our factual findings, we first conclude that campaigning was prohibited in the panel hearing rooms. The rooms were rented jointly by employer and union to

June 28, 2010

transact official labor-management business. For the duration of such rental, the conference rooms constituted employer and/or union facilities that could not permissibly be diverted to a campaign use.

The *Rules* make clear in several places that use of employer or union facilities to support campaign activity is strictly prohibited. Thus, Article VII, Section 12(c), the provision the protestor cites, declares that union facilities may not be used to assist in campaigning absent fair market compensation and written advance notice to all candidates that the facilities were available for such purpose.

This point is echoed in Article XI, Section 1(b)(2), which prohibits employer contribution of “anything of value, where the purpose, object, or foreseeable effect of the contributions is to influence, positively or negatively, the election of a candidate.” The prohibitions of this section “extend beyond strictly monetary contributions made by an employer and include ... use of employer ... facilities.”

The same prohibition is extended by Article XI, Section 1(b)(3) with respect to use of union facilities to support campaign activity.

The *Rules* declare that “[c]andidates are strictly liable to insure that each contribution received is permitted under these Rules,” further stating that prohibited contributions must be returned promptly. Article XI, Section 1(b)(13).

Finally, the *Rules* make the impermissible use of employer and union contributions for campaigning a strict liability offense. Thus, “[i]gnorance by a candidate ... that union or employer ... resources were used to promote a candidacy shall not constitute a defense to an allegation of a violation of these Rules.” Article XI, Section 1(b)(15).

We find Hoffa-Keegel 2011 in violation of each of the provisions we cite here because campaign flyers were placed in the Boardroom and Renaissance conference rooms used by the national carhaul panels on June 8, 2010 at the Providence Hilton. Whether the placement of the flyers there was solely the action of Alexander who, according to the campaign, was unaware that his actions were impermissible under the *Rules* is of no consequence, for they had the “foreseeable effect ... to influence... the election of a candidate” for which there is strict liability.

It is well-understood among experienced union representatives that they may not engage in internal union electoral politicking in labor-management meetings, as such campaign activity may inappropriately suggest that the union with which the campaigner is affiliated is supporting a particular candidate or group of candidates. The placement in the panel A and B conference rooms of Hoffa-Keegel 2011 campaign flyers made just such a suggestion, *i.e.*, that the IBT as an entity supported the Hoffa-Keegel candidates electorally. In a joint labor-management grievance setting, panels make decisions about the merit of discharge and suspension decisions and rely for their continued viability on confidence by the participants in the integrity of the process. Any suggestion that the outcome of a given case might be influenced by internal union political factors or anything other than the merit of the case does the process a considerable disservice.

Accordingly, we GRANT the protest.

June 28, 2010

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 find that the placement of Hoffa-Keegel 2011 campaign flyers in the carhaul grievance hearing rooms violates the *Rules* because it exacted an involuntary contribution to the campaign from the IBT and the employers that were present there to transact official union business.

In this case, the campaign supporters should have been vigilant to insure that their partisan activity did not enter the rooms. Instead, they placed the flyers in the rooms or permitted it to happen. The problem was abated not by supporters of Hoffa-Keegel 2011, but by the quick action of a campaign opponent, Zuckerman, who immediately and correctly recognized that the flyers had no place in the grievance hearing rooms and removed them. It would be inappropriate to reward the campaign with a less substantial remedy merely because they were saved from a violation of longer duration by an opponent’s prompt action.

Accordingly, we order the following remedy. We direct the Hoffa-Keegel 2011 campaign to cease and desist from accepting contributions of material, albeit involuntary, support from employers and the IBT that are the result of the actions of the campaign or its supporters in conducting campaign activity where it is impermissible to do so.

We further direct the Hoffa-Keegel 2011 campaign to transmit by mail or fax, at its option, the attached notice to all persons, including management and union panel members, representatives, grievants and witnesses, who participated in, had business before, or attended carhaul panel A or B on June 8 at the Providence Hilton. The transmission of the notice shall be completed within 3 business days of receipt of this decision; the campaign shall provide affidavit proof of compliance to our offices within 1 business day thereafter.

A decision of the Election Supervisor takes immediate effect unless stayed. *Lopez*, 96 EAM 73 (February 13, 1996).

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

Zuckerman & Gegare, 2010 ESD 5

June 28, 2010

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 5

June 28, 2010

DISTRIBUTION LIST (BY EMAIL UNLESS OTHERWISE SPECIFIED):

Bradley T. Raymond, General Counsel
International Brotherhood of Teamsters
25 Louisiana Avenue, N.W.
Washington, D.C. 20001
braymond@teamster.org

Steve South
IBT Local Union 25
544 Main Street
Boston, MA 02129
ssouth@teamsterslocal25.com

David J. Hoffa
Hoffa Keegel 2011
1100 Connecticut Avenue, N.W., Ste. 730
Washington, D.C. 20036
hoffadav@hotmail.com

George Slicis
IBT Local Union 25
544 Main Street
Boston, MA 02129
gslicis@teamsterslocal25.com

Ken Paff
Teamsters for a Democratic Union
P.O. Box 10128
Detroit, MI 48210-0128
ken@tdu.org

Joe Bairos
IBT Local Union 251
121 Brightridge Ave.
East Providence, RI 02914
joebairos@teamsterslocal251.com

Barbara Harvey
1394 E. Jefferson Avenue
Detroit, MI 48207
blmharvey@sbcglobal.net

Bill Alexander
IBT Local Union 355
1030 S. Dukeland Street
Baltimore, MD 21223
balexander@teamsters355.com

Fred Zuckerman, President
Teamsters Local Union 89
3813 Taylor Blvd.
Louisville, KY 40215
fredzuckerman@aol.com

Maureen Geraghty
426 Old Salem Road
Winston-Salem, NC 27101
mg@geraghtylawfirm.com

Fred Gegare
P.O. Box 9663
Green Bay, WI 54308-9663
kirchmanb@yahoo.com

Jeffrey Ellison
214 S. Main Street, Suite 210
Ann Arbor, MI 48104
EllisonEsq@aol.com

Robert M. Colone, Esq.
P.O. Box 272
Sellersburg, IN 47172-0272
rmcolone@hotmail.com

Sean O'Brien
IBT Local Union 25
544 Main Street
Boston, MA 02129
sobrien@teamsterslocal25.com

OFFICE OF THE ELECTION SUPERVISOR
for the INTERNATIONAL BROTHERHOOD OF TEAMSTERS
1801 K STREET, N.W., SUITE 421 L
WASHINGTON, D.C. 20006
202-429-8683
877-317-2011 TOLL FREE
202-429-6809 FACSIMILE
electionsupervisor@ibtvote.org
www.ibtvote.org

Richard W. Mark
Election Supervisor

June 28, 2010

TO: All persons who attended Carhaul National Grievance Panel Meetings in Providence, Rhode Island on June 8, 2010

FROM: Richard W. Mark, Election Supervisor

The Rules for the 2010-2011 IBT International Union Delegate and Officer Election (“*Rules*”) prohibit employers and unions from providing support to candidates and slates of candidates for IBT office. In particular, candidates and slates of candidates are prohibited from any campaign activity – including distributing campaign flyers – in rooms used for labor-management grievance meetings. The reason for this prohibition is that such campaigning may improperly suggest to persons present that the employers or labor organizations using the room support the candidate or slate of candidates and have granted permission for such campaign activity.

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

The Election Supervisor has determined that the Hoffa-Keegel 2011 campaign is in violation of the *Rules* because campaign supporters distributed (or permitted distribution of) campaign flyers inside the rooms reserved for carhaul grievance panel hearings at the Carhaul National Grievance Panel Meetings held at the Hilton Hotel in Providence, Rhode Island on June 8.

You have received this notice because it was determined that you attended the Carhaul National Grievance Panel Meetings on June 8, 2010.

The Election Supervisor has issued this decision in *Zuckerman & Gegare*, 2010 ESD 5 (June 28, 2010). You may read the full text of this decision at <http://www.ibtvote.org/protests/2010/2010esd005.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.