

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

IN RE: HOFFA-KEEGEL 2011,)	Protest Decision 2010 ESD 7
)	Issued: July 17, 2010
Protestor.)	OES Case No. P-010-071410-NA
)	
)	

Hoffa-Keegel 2011 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 Fred Gegare, Brad Slawson, Fred Zuckerman and perhaps Lucio Reyes, candidates for International office, are violating the *Rules* and our *Advisory on Accreditation of Candidates and Publication of Campaign Literature in The Teamster* by circulating slate accreditation petitions without first filing a slate declaration with the Election Supervisor’s office.

Election Supervisor representative Jeffrey Ellison investigated this protest.

Findings of Fact and Analysis

Article X of the *Rules* permits a candidate for International office to be certified as an “accredited candidate” and thereby obtain access to IBT membership lists and have his/her campaign literature published in IBT magazines and on the IBT website. To achieve accredited status, a candidate for union-wide office must gather the petition signatures of at least 2.5% of the IBT membership according to the procedures laid out in Article X; candidates for IBT regional office must gather the petition signatures of at least 2.5% of the IBT membership of the particular region.

Article X, Section 2(b) permits “[m]embers of a slate of candidates formed in accordance with Article VIII of the Rules [to] circulate a single petition for some or all of the members of the slate.” Article VIII, Section 1(a) grants to each candidate the right “in conformity with this Article to seek nomination, be nominated, campaign and appear on the ballot for any ... International Officer position as a member of a slate of candidates ...” Article VIII, Section 1(b) lays out the procedure for slate formation, *viz.*

To form a slate, there shall be mutual consent between and among all candidates running on the slate. Such mutual consent shall be evidenced by the signing of a declaration by all members of the slate, giving the position that each candidate seeks and the name, if any, of the slate to be formed. Slate declaration forms ... for International Officer nominations and elections shall be submitted to the Election Supervisor. * * *

The interplay between slate formation and the gathering of accreditation signatures is further explained by our *Advisory on Accreditation of Candidates and Publication of Campaign Literature in The Teamster*, issued July 14, 2010. The *Advisory*, translating Article X, Section 2(b) of the *Rules* into practical terms, states that “a slate petition form may be circulated by persons who are

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part of a slate formed in accordance with Article VIII of the *Rules*.” *Advisory*, p. 3. Explaining the rationale for permitting circulation of slate accreditation petitions, the *Advisory* states the following:

By circulating a slate petition form, candidates are telling members that they have complied with Article VIII of the *Rules* and filed a slate declaration, and that members of the slate will not leave that slate (except where ruled ineligible to run).

Hoffa-Keegel 2011 alleges that Gegare, Slawson, Zuckerman and perhaps Reyes are violating the *Rules* and the *Advisory* by circulating slate accreditation petitions without first filing a slate declaration form with the Election Supervisor. According to the protestor, no slate accreditation petition may be circulated unless a slate declaration form has first been filed.

Investigation showed that no slate declaration form has been filed containing the name and signature of Fred Gegare, Brad Slawson, Fred Zuckerman or Lucio Reyes. Investigation further showed that the Gegare campaign website, www.fredgegare2011.com, has available for download a slate accreditation petition that lists the names of Gegare, Slawson and Zuckerman. Such petitions have been circulated. In addition, evidence demonstrates that petitions listing the names of Gegare and Reyes have also been circulated.

The protestor asserts that “[s]ince Gegare *et al* are circulating a slate petition without first filing a slate declaration as required by the *Advisory*, the Gegare slate and each of its members are fraudulently representing to members that they are part of a slate.”

The issue this protest presents is settled. In *Ostrach*, 2005 ESD 43 (December 30, 2005), *aff’d*, 06 EAM 7 (January 9, 2006), the protestor asserted against the Hoffa 2006 campaign precisely the argument that Hoffa-Keegel 2011 now presents, that slate accreditation petitions may not be circulated without a slate declaration first being filed. At the time the 2005 protest was filed, counsel for the Hoffa 2006 campaign stated that “our understanding of the *Rules* is that there is absolutely nothing wrong with circulating petitions without first joining any particular slate.” We denied the protest in *Ostrach* and accredited all the candidates on the Hoffa 2006 slate for whom sufficient petition signatures had been submitted even though the slate declaration form for those candidates was submitted to our office at the very end of the accreditation period, after the slate accreditation petitions had been circulated, signed, and submitted. In reaching this conclusion, we wrote the following:

We decline to construe the *Rules* to require that slates be formed before slate accreditation petitions are submitted or, for that matter, before they are first circulated. Instead, so long as a slate, even one formed after petitions are submitted, includes all of the candidates whose names appear on timely submitted slate accreditation petitions, we will accept the slate accreditation petitions and afford the candidates the rights they may obtain via petition. The purpose of accreditation petitions is to demonstrate that a candidate – or in the case of slate accreditation petitions, a slate of candidates – enjoys substantial support among the membership. Each member who signs a slate accreditation petition indicates his/her support for a slate that includes the candidates listed on the petition. The member’s signature on a slate accreditation petition is of no value for accreditation purposes if a slate of the candidates listed on the petition is never formed. However, a slate formed after the date members have signed petitions that includes all candidates listed on the slate

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accreditation petitions is consistent with the representation the candidates made when they jointly solicited signatures on the petition and with the members' intent in signing the petitions for those candidates jointly. Those petitions will be recognized as valid to support a request for pre-convention accreditation.

Ostrach, 2005 ESD 43 (December 30, 2005), p. 3.

In the appellate decision affirming *Ostrach*, the Election Appeals Master quoted the foregoing passage from our decision and wrote the following:

In their submissions and at the hearing of this appeal, counsel for the protestor, the Leedham campaign, and the TDU disputed the Election Supervisor's aforementioned interpretation of the Rules approving formation of slates subsequent to circulation and/or submission of slate accreditation petitions. They argue his analysis is contrary to the Rules, weakens the effectiveness and fairness of the electoral process, and undermines the rank and file decision making on candidate support. It was further argued that the ruling will encourage candidate manipulation of the slate concept.

None of these arguments are persuasive. Accordingly, the Election Supervisor's decision in 2005 ESD 43 is affirmed.

Ostrach, 06 EAM 07 (January 9, 2006), pp. 3-4.

Hoffa-Keegel 2011 has presented no argument for reversing this precedent. Accordingly, we DENY the protest.

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
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