

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

IN RE: FRANK HALSTEAD,)	Protest Decision 2010 ESD 8
)	Issued: July 26, 2010
Protestor.)	OES Case No. P-009-071310-FW
)	
_____)	

Frank Halstead, a member of Local Union 572, timely 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 Local Union 399’s newsletter published campaign content supporting the Hoffa-Keegel 2011 campaign.

Election Supervisor representative Michael J. Miller investigated this protest.

Findings of Fact

Local Union 399 is comprised of members employed in the motion picture industry. It periodically publishes a newsletter, *NewsReel*, to inform its members of news and developments pertinent to their employment. *NewsReel* is mailed to each member’s home address and is posted on the local union’s website, www.ht399.org.

The May 2010 edition of *NewsReel* consisted of 12 pages published in magazine format.¹ The magazine contained seven articles on diverse topics typical of a local union publication, including a message from the principal officer, an article on organizing, work of local members, and photos from a golf outing.

Pages 6 and 7, at the center of the newsletter, were headlined, “Movie Locals Briefed on Contract Negotiations.” The accompanying article, printed on the page 6 (or left) side of the center two pages, reported that negotiations for a successor Local Union 399 studio collective bargaining agreement were to begin shortly and that, to prepare for those negotiations, Teamsters from film industry local unions around the United States and Canada met to devise bargaining strategy. The article reported the union’s goals for the upcoming negotiations. The article also reported that the strategy meeting drew high-ranking IBT officials, including IBT vice presidents John Coli and Tyson Johnson and IBT Executive Administrator Ed Keyser, as well as representatives from local unions in 12 states and Canada. Inserted between the headline and the article text was a photo spanning page 6 that showed some 45 meeting attendees at work around a rectangular conference set-up in a hotel ballroom. The caption for the photo read, “Representatives of movie locals from throughout the nation and Canada gather for a quarterly meeting to discuss Local 399’s upcoming studio negotiations.” To the right of the article text on page 6 were 2 photos. The first depicted General President Hoffa with Local Union 399’s principal officer, Leo T. Reed. The second showed IBT vice president Tyson Johnson with Local

¹ The magazine was produced on 3 folios of 11” by 17” paper, folded at the center and saddle-stitched to produce 12 8½” by 11” pages.

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Union 728 representative Renee Hinson. The captions for these photos identified the persons in the photos by name and title and said nothing more.

The facing page 7 displayed 3 photos and captions. The upper left photo showed Local Union 728 business agent and movie division representative Jerry Carter. The upper right photo showed Local Union 728 principal officer Jimi Richards. The lower photo, which spanned the width of page 7, depicted Local Union 769 president Michael Scott, Local Union 399 attorney Joe Kaplon, and IBT general counsel Brad Raymond. The captions for these three photos identified the persons depicted in them and said nothing more.

In the 3 separate photos depicting Hoffa, Carter, and Richards, each is wearing a navy sticker with gold lettering that reads “HOFFA KEEGEL 2011.” The “O” in “HOFFA” is a stylized image of a horse excerpted from the IBT’s horses and wheel logo. The “2011” is printed on the horizontal stroke of the “A” in HOFFA. This was the Hoffa-Keegel 2011 campaign emblem. The stickers are visible and their content clearly legible in each of the 3 photos in which they appear.

Investigation showed that the bargaining strategy meeting took place in Las Vegas, Nevada on the afternoon of Monday, May 10, 2010. The IBT’s Unity conference was held at the same location starting on May 9 at 1 p.m. and concluding on May 10 at noon. General President Hoffa attended the Unity conference but did not attend the bargaining strategy session. The remaining 8 persons depicted in the 5 photos on page 7 and the right side of page 6 attended the bargaining strategy conference on which the article on page 6 of *NewsReel* reported.

Local Union 399 contracts its newsletter layout and production to Behar Publications, Inc. (formerly Pacific Media Company). Shed Behar, the company’s principal, is responsible for writing, design and layout of the newsletter, as well as those for several other California Teamsters local unions and unions of electricians, stage employees and laborers. In this role, Behar attended and took photos at the Unity conference, the motion picture bargaining strategy session, and other events that took place that weekend. One of the events he attended was the Hoffa-Keegel 2011 campaign kick-off, held late Sunday afternoon, May 9, immediately following the first day of the Unity conference. Hoffa-Keegel 2011 stickers, among other campaign material, were distributed at that campaign event. The photo of Hoffa and Local Union 399’s Reed that appeared on page 6 of *NewsReel* was taken at or immediately after that event. The remaining photos on pages 6 and 7 of the publication were taken at the bargaining strategy meeting.

Behar told our investigator that he covered the bargaining strategy session because Reed wanted some press on the upcoming contract negotiations, which were important to the membership of Local Union 399. Behar attended the session, wrote the text of the article and laid out the piece with the photos he took, and presented the entire newsletter to Reed for input and proofing.

Behar said he chose the photos of Carter and Richards, each sporting a campaign sticker, because of the photos’ “eye appeal.” He said the photo of Hoffa and Reed was important because it conveyed the General President’s support of the contract negotiations, which directly affected a significant segment of the local union’s members. However, the accompanying article

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does not mention Hoffa by name or title or otherwise indicate that he supported or otherwise had any role in contract negotiations.

Behar conceded to our investigator that he “screwed up” in using the photos that contained the campaign stickers. He said that he did not notice that the subjects of the photos were wearing campaign badges. Reed, who proofed and gave final approval for the newsletter content, echoed this statement, saying that he did a hurried proof of the newsletter and “overlooked” the campaign stickers, further stating that he relied on Behar to “catch” things like that. Both acknowledged that the inclusion of the stickers violated the *Rules*.

The newsletter was mailed by first-class presort on June 22, 2010 to 4,808 recipients, a number that included all members of the local union, 312 retirees, and approximately 100 other industry personnel and managers. In addition, it was posted to the local union’s website. Following the filing of the protest on July 13, the local union disabled the link to the newsletter from the website’s home page that same day and removed the url for the newsletter completely on July 14.

Analysis

Article VII, Section 8(a) provides that no publication or communication financed directly or indirectly by a union may be used to support or attack any candidate or the candidacy of any person. Article XI, Section 1(b)(3) provides that no union 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. Article XI, Section 1(b)(6) provides that no union funds or other things of value shall be used, directly or indirectly, to promote the candidacy of any individual. Article XII adopts expressly by reference LMRDA Section 401(g), which prohibits union assistance to campaigning.

In *Reich v. Teamsters Local 843*, 869 F.Supp. 1142 (D.N.J. 1994), the court reviewed the case law under Section 401(g) with regard to campaign content in union-sponsored communications:

To establish a violation of Section 401(g), it is not necessary that the questioned publication be explicitly or implicitly committed to endorsing specific candidates or attacking the opposition. Rather its overall tone, timing, and content must be evaluated to determine whether there is any blatant encouragement of the incumbent [or challengers].’ *Donovan v. Local 719, UAW*, 561 F.Supp. 54, 58 [113 LRRM 2902, 2906] (N.D. Ill. 1982); accord [*Brock v. Connecticut Union of Telephone Workers*, 703 F.Supp. [202,] at 206, *Usery v. International Org. Masters, Mates and Pilots*, 538 F.2d 946, 949 (2d Cir. 1976); [*Hodgson v. Liquor Salesmen’s Union Local No. 2*, 334 F.Supp. at 1369, 1377, *aff’d*, 444 F.2d 1344 (2d Cir. 1971); *Wirtz v. Independent Workers Union of Florida*, 272 F.Supp. 31, 33 (M.D. Fla. 1967)]. Regarding content, federal regulations interpret LMRDA §401(g) as ‘prohibit[ing] any showing of preference’ by union-financed publications through praise, endorsement, criticism or attack directed towards a candidate. 29 C.F.R. §452.75 (1994); accord *McLaughlin v. American Fed’n. of Musicians*, 700 F.Supp. 726, 734 (S.D.N.Y. 1988) (‘promotion of a candidate under §401(g) includes both affirmative statements about the candidate and negative references about the opposition.’).

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In addition to the timing, tone, and content, courts often consider ‘the circumstances surrounding the challenged publications. *Am Fed'n. of Musicians*, 700 F.Supp. at 734 (citing *Liquor Salesmen's Union*, 334 F.Supp. 1377). In *American Fed'n of Musicians*, the court looked beyond the text of the challenged articles to consider the legitimate need for reporting on and discussion of an incumbent union president’s activities in a union-financed newspaper, even though such reporting could impact an upcoming election. *American Fed'n. of Musicians*, 700 F.Supp. at 734. The court held that ‘the continued direct and indirect personal attacks [on the incumbent] ... constituted more than just reporting on issues that concerned the union.’ *Id.* at 735.

See also, e.g., Camarata v. Teamsters, 478 F.Supp. 321 (D.D.C. 1979); and *New Watch-Dog Comm. v. New York City Taxi Drivers Union, Local 3036*, 438 F.Supp. 1242, 1250 (S.D.N.Y. 1977) (publication of articles referring to incumbent officers was “substantially attributable to their participation in newsworthy events of interest to the Union ...”).

The tone, timing and content test has been the mainstay for examining the alleged use of union publications to support or attack a candidate under Article VII, Section 8(a) of the *Rules*. In *Martin*, 95 EAM 18 (October 2, 1995), the Election Appeals Master instructed that “a union publication may report on the regular functions, policies, and activities of an incumbent officer, but may not provide coverage that supports the incumbent’s candidacy for union office.” In *Hicks*, 06 EAM 22 (March 15, 2006), *affirming* 2006 ESD 110 (March 2, 2006), the Appeals Master observed that “elected local officers should not, and cannot, be constrained by the *Rules* from discharging their responsibilities to the membership in reporting on matters of vital interest, as long as the reportage is politically neutral.” Further, “[t]o establish that a challenged article does not impermissibly promote a candidate, the publisher of the article must demonstrate that the article’s tone, timing and content, considered together, reflect that it is a valid news article. Specifically, with regard to its tone and content, a challenged article must objectively address a newsworthy subject unrelated to the International election process.” *Kilmury*, 96 EAM 109 (February 28, 1996), *affirming* P-303 (February 15, 1996). Finally, where a union-financed publication contains explicit campaign material, the article violates the *Rules* and no examination of the publication’s timing is required. *Id.*

Here, we find that the text of the article did not violate the *Rules* because it reported on a newsworthy event of interest to the membership, *viz.*, a strategy session in advance of important contract negotiations.

However, the use of the three challenged photos (those of Carter, Richards, and Hoffa with Reed) violated the *Rules* because the stickers the photo subjects wore supported candidates for International office. The words on the stickers were plainly visible in each photograph and were a notable feature of each photo. We find that the use of the photos that included the stickers was not incidental and could not have been overlooked by the photographer and photo layout editor, Behar, or by the person with final editorial control over the publication, Reed. Whatever news value the photos of Carter and Richards added to the article on bargaining strategy was overshadowed by their campaign advocacy on behalf of candidates for International office.

In particular with respect to the photo of Hoffa with Reed, it is not disputed that General President Hoffa was not present at the bargaining strategy conference. The text of the article

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makes no mention of what Behar termed to our investigator as Hoffa's "support for the negotiations." As such, the photo did not "constitute reporting on the activities of incumbent General President Hoffa with respect to his 'regular functions, policies and activities,'" *Halstead*, 2000 EAD 6 (August 1, 2000), and therefore was not protected by that aspect of the tone, timing and content test. It bears repeating that "the mere fact that General President Hoffa is an incumbent does not sanction publicity about him in union newspapers published during the period of his candidacy, absent any linkage to activity on his part with respect to his union functions." *Id.*

In sum, we find that Local Union 399 and its principal officer, Leo T. Reed, violated the *Rules* by using the local union's publication, *NewsReel*, to support the candidacy for International office of James P. Hoffa and his slate. 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 find that the use of a union publication to support the candidacy for re-election of General President Hoffa and his slate requires remedies from the local union and from the Hoffa campaign.

We order Local Union 399 to cease and desist from providing union support to any candidate. Specifically, we order the local union, its officers and agents to refrain from using *NewsReel* or any other union publication to support or attack any candidate or the candidacy of any person, whether for International office or for delegate or alternate delegate to the IBT convention.

We further order Local Union 399 to insert the notice attached to this decision in *NewsReel* and post it on its website, www.ht399.org. We order this remedy because the violation found here occurred both in the publication and on the website and because most members of the local union do not work at locations where the union maintains a bulletin board for posting of official notices. The purpose of this notice is to educate the members of the local union of the *Rules'* requirements, to notify them that their local union leadership violated the *Rules*, and to inform them that their local union cannot and does not support any candidate or slate of candidates for International office. A well-publicized and widely distributed notice also will provide a deterrent to further misuse of union publications and other resources to campaign.

With respect to publication of the notice in *NewsReel*, we direct that it be inserted at 100% size on page 3 of the August 2010 edition, directly opposite the "Message from the Secretary-Treasurer" article appearing on page 2 of the publication. We further direct that nothing else appear with the notice on page 3, except that the page number and "Local 399" graphic may appear in the footer of that page. We further direct that the local union or its agent supply us with a pre-production proof of the entire August 2010 edition before it is printed and mailed to recipients. Finally, we direct that the August 2010 edition be mailed by first-class

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presort to the same classes of recipients who were mailed the May 2010 edition of the publication.

With respect to posting of the notice on the website, we direct that it appear in the first position under the heading “Current Issues & News” on the home page and be maintained in the first position for 60 days following the date this decision issues. We direct that the local union place the notice under the title, “Local Union 399 Violates IBT Election Rules;” this headline is to be followed, on separate lines, by “To: All Members of Teamsters Local Union 399,” “From: The IBT Election Supervisor,” and “The IBT Election Supervisor has found that Local Union 399 violated the IBT Election Rules ...” These lines are to be followed by the “Read More” link that, when clicked, redirects the user to the full notice. Following the expiration of the 60 days web-posting ordered here, the local union may remove the notice from its website.

Within 3 business days after compliance with both of these posting requirements, the principal officer must file an affidavit of compliance with our office attesting that the notice was posted as required.

An additional remedy is required from Local Union 399 because the local union’s resources were used to disseminate a message of support for one candidate. Under the circumstances presented here, the best tool available to level the playing field between the Hoffa campaign and other candidates for International office is to require Local Union 399 to pay the expenses of a campaign mailing to all classes of recipients to whom the May 2010 edition of *NewsReel* was sent. We order that remedy.

The remedial mailing we order here is available to any candidate for IBT General President or, if a member of a slate for which a slate declaration form has been filed with our office, to the slate that includes the candidate for IBT General President, excluding candidate James P. Hoffa and the Hoffa slate. Notice of intention to access the remedy ordered here may be given at any time but no later than November 15, 2010 by email to Local Union 399 with copy to our office. The mailing may be completed at any time but no later than December 1, 2010. We place these time limits on the availability and accomplishment of the mailing because the violation we find here took place well in advance of the election of the local union’s delegate and alternate delegate election and Local Union 399’s delegate election will not occur until late winter or early spring of 2011.

Each candidate or slate that qualifies for a mailing under this decision is entitled under the remedy we order here to a mailing separate from the mailing granted to any other such candidate. The expense for which Local Union 399 is liable under this remedy is the cost of #10 envelopes, mailing labels or address-labeling process, paper and printing (including plate-making) for a one-sheet, two-sided flyer printed on white 20# paper in black ink, and first class presort postage. The local union is not responsible for artwork or layout expense associated with the mailing. If any candidate seeks to use other than white 20# paper and/or ink in addition to or instead of black, the incremental cost, if any, of such enhancements is the responsibility of that candidate and not the local union. The local union shall supply the address list of the classes of recipients to whom the May 2010 *NewsReel* was sent to the mail house designated by any candidate or slate accessing this remedy and in a fashion to permit use of first-class presort mailing. The local union shall provide such guarantee of payment as the designated mail house shall reasonably require and shall do so in a time that will not delay the mailing.

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These remedies do not undo the benefit the Hoffa campaign obtained from the union publication. So, finally and to complete the remedy, we order the Hoffa campaign to reimburse Local Union 399 \$920.00 (a sum equal to 6.25% of the total costs of production, printing and mailing of the May 2010 edition of *NewsReel*), reflecting the cost of the space in the magazine that Local Union 399 contributed to the Hoffa campaign. We find that the photos that violated the *Rules* occupied space equivalent to 75% of one page of the publication. As the publication ran 12 pages, the portion of the publication costs for which the Hoffa campaign is responsible under this remedy is 6.25%. We order this remedy because Article XI, Section 1(b)(13) makes candidates strictly liable for impermissible contributions and requires that “[p]rohibited contributions must be returned promptly.” For the purpose of this remedy, “the total costs of production” includes the writing, photography, layout and associated costs related directly to the production of the May 2010 edition of *NewsReel*. This reimbursement must be made within 5 business days after this decision issues. Within 3 business days after making the required reimbursement, the Hoffa campaign must file an affidavit of compliance with our office attesting that the reimbursement was made.

We maintain jurisdiction of this matter to resolve questions concerning the remedy.

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

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 8

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Richard W. Mark
Election Supervisor

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TO: All Members of Teamsters Local Union 399

FROM: Richard W. Mark, Election Supervisor

The IBT Election Supervisor has found that Local Union 399 violated the IBT Election Rules by using its publication, *NewsReel*, to support the candidacy of James P. Hoffa for election as General President of the International Brotherhood of Teamsters.

The Rules for the 2010-2011 IBT International Union Delegate and Officer Election (“*Rules*”) prohibit use of union publications to support or attack the candidacy of any person. Under this rule, a local union may not run photos or articles in its publication that promote or advertise that a member is running for International office or that other members support that candidacy. Local unions cannot take sides in any union election, or give one candidate campaign access to the membership unless it gives the same access to all candidates.

The May 2010 edition of *NewsReel* included photos of 3 members wearing campaign stickers with the logo of the Hoffa campaign. The publication of these photos in a union-financed publication improperly used union resources to promote the Hoffa candidacy and gave the improper impression that the local union supported that candidacy.

The Election Supervisor will not tolerate violation of the *Rules*. The Election Supervisor has ordered Local Union 399 not to provide support to any candidate for IBT office and to publish this notice in the August 2010 edition of *NewsReel* and on its website, www.ht399.com. To give the same advantage to other candidates for IBT General President that Local Union 399 gave to the Hoffa Campaign, the Election Supervisor has also ordered Local Union 399 to pay the costs of printing and mailing campaign literature to its members for all other candidates for IBT General President.

The Election Supervisor has issued this decision in *Halstead*, 2010 ESD 8 (July 26, 2010). You may read this decision at <http://www.ibtvote.org/protests/2010/2010esd008.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.