

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

<b>IN RE: FRANK HALSTEAD,</b>	)	Protest Decision 2010 ESD 11
	)	Issued: August 2, 2010
<b>Protestor.</b>	)	OES Case No. P-019-072810-NA
	)	
_____	)	

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 the Hoffa campaign violated the *Rules*’ slate provisions in the manner set forth below.

**Findings of Fact**

On April 8, 2010, James P. Hoffa, C. Thomas Keegel and Robert Bouvier signed a slate declaration listing Hoffa as candidate for General President, Keegel for General Secretary-Treasurer, and Bouvier for Vice President - Canada. The declaration listed the three names and did not include a slate name.

By letter dated July 15, 2010 addressed to the General Executive Board, Keegel announced that he will retire at the end of his current term as General Secretary-Treasurer. The letter continued: “Accordingly, I will not be a candidate for office in 2011 on the Hoffa Slate or any other slate running for IBT office.”

The next day, a memo initialed on Keegel’s behalf was delivered to our office. It stated, “This will notify you that I am withdrawing as a candidate for General Secretary-Treasurer, effective immediately. Please advise if there are any additional steps I must take in order to comply with the election rules.” We responded to Keegel on July 19 with the following inquiry<sup>1</sup>:

First, I request that you clarify whether this is a temporary cessation of candidacy or if you intend now to make an irrevocable decision not to accept nomination at the 2011 IBT International Convention for any International office. Please submit a written statement making clear your intent. Having previously signed a declaration as a member of a slate, you understand that a candidate “may not retract such declaration.” *Rules*, Article VIII, § 2(a). Under that rule, a candidate cannot unilaterally leave a slate he has joined and seek International office as either an independent candidate or member of another slate. Accordingly, if it is your intention to retain the option to resume your candidacy for International office in the 2011 election, any such pursuit will by rule be as a

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<sup>1</sup> In addition to the inquiry printed here, we asked Keegel if he sought “status as an ‘accredited candidate’ under Article X.” Keegel replied that he did not seek such status. We also advised Keegel that he was required to file CCER contribution and expense reports for each reporting period during which he was a candidate. He replied that he would do so.

member of the slate you joined. On the other hand, if you intend to end your candidacy now for all International office positions that will be elected in the 2011 election and, in the event you are nominated for any such office at the 2011 IBT Convention, decline nomination for any such office, you may state that intention now and your statement will serve to bar you from the International office ballot in 2011. Because of the significance of the withdrawal, please sign your statement of intent personally.

Keegel replied by letter dated July 26, stating: "I hereby certify that I have made an irrevocable decision not to accept nomination at the 2011 IBT International Convention for any International Office." The letter bore his signature. Between the dates of our letter to Keegel and his reply, Keegel wrote "To All IBT Affiliates" on July 22, stating, "[a]fter more than a half century as a member of our great International Union, I will retire as General Secretary-Treasurer of the International Brotherhood of Teamsters (IBT) at the end of this term."

On July 28, the Hoffa campaign filed a slate declaration comprised of 21 individuals, including Hoffa for General President, Ken Hall for General Secretary-Treasurer, Bouvier for Vice President - Canada/President, Teamsters Canada, and 18 others for various vice president positions. The form is designated as an "[e]xpansion of a previously declared slate." Keegel's name or signature does not appear on the slate declaration. The Hoffa campaign is now circulating slate petitions seeking accreditation for all candidates listed on the new slate declaration.

### Analysis

Article VIII of the *Rules* governs slate formation. It states that "[e]ach candidate shall have 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(a). The article further states that "[t]o form a slate, there shall be mutual consent between and among all candidates running on the slate." *Id.*, Section 1(b). Finally, the article cautions that "[o]nce a candidate declares his/her intent to run as a member of a slate, he/she may not retract such declaration." *Id.*, Section 2(a).

Our *Advisory on Accreditation of Candidates and Publication of Campaign Literature in The Teamster*, issued July 14, 2010, includes a section addressing slate declarations and accredited candidate petitions. It permits circulation of slate accreditation petitions for candidates who are part of a slate formed according to Article VIII of the *Rules*. Specifically, the *Advisory* states:

Article VIII, Section 2 provides that members declaring their intent to run as a slate may not retract such a declaration. 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).

The protestor, through his counsel, alleges the following violations of the *Rules* and the *Advisory*:

Mr. Hoffa and Mr. Bouvier have violated Art. VIII, § 1 by putting their names on both the Hoffa-Keegel and Hoffa 2011 slates. Under the express terms of [the] Advisory, their posting of accreditation petitions serves to inform the membership that they have “filed a slate declaration, ...” They have also implicitly violated Art. VIII, § 2(a) by retracting their names from the Hoffa-Keegel slate, if they have somehow managed to withdraw as candidates from the Hoffa-Keegel slate.

Mr. Keegel has violated Art. VIII, § 2(a) by retracting his name from the Hoffa-Keegel slate. Although the *Rule* is not so limited, the Advisory would permit a candidate to leave a slate if declared ineligible. Mr. Keegel has not been declared ineligible. He has instead declared his intention to remain in full-time union office, thereby retaining his eligibility, until the election has been concluded and his current term of office ends.

The rules and your advisory clearly and unambiguously prohibit Mr. Hoffa and Mr. Bouvier from running on both slates, and they just as clearly prohibit all three candidates from withdrawing from the Hoffa-Keegel slate.

Our analysis starts with the uncontroversial notion that slates are formed only by candidates. The language of Article VIII makes this plain. Thus, Section 1(a) grants “[e]ach candidate” the right to form a slate; Section 1(b) declares that a slate is formed only if there is “mutual consent between and among all candidates running on the slate;” and Section 2(a) warns that a “[o]nce a candidate declares his/her intent to run as a member of a slate, he/she may not retract such declaration.”

The *Rules* define “candidate” as “any member who is actively seeking nomination or election for any ... International Officer position.” Definition 6. Hoffa, Keegel and Bouvier each declared their candidacies for International office when they signed the April slate declaration. The language of the form made that clear, *viz.*

I, the undersigned, hereby affiliate with the slate of candidates listed below. I declare that I am a candidate for the position listed next to my name. I further declare that I have agreed to form a slate with all candidates listed, and they have agreed to form a slate with me.

Keegel’s individual declaration of candidacy did not, however, require that he continue as a candidate through nomination and election. Before nomination, a candidate for International office may end his/her candidacy at any time. Once nominated, a candidate may withdraw his/her candidacy at any time prior to the printing of ballots. Article III, Section 5(p); *Klootwyk*, 06 EAM 64 (August 31, 2006). Accordingly, Keegel was free to withdraw from candidacy.

Once a candidate for International office withdraws his candidacy, he loses all rights that such candidates have under the *Rules*. Thus, a withdrawn candidate cannot solicit or accept campaign contributions for himself, for such contributions may only be solicited for and accepted by candidates. Definition 5; Article XI, Section 1. Further, a withdrawn candidate no longer has the rights the *Rules* grant to a candidate for International office to review local union election plans (Article II, Section 5(c)), to inspect and make notes from collective bargaining

agreements (Article VII, Section 1(a)), to receive from local unions current lists of work sites (Article VII, Section 1 (b)), to access and use membership lists of the International Union (Article VII, Section 3), to receive certified delegate lists (Article VII, Section 4), to receive lists from local unions of the dates and times of general and special membership meetings (Article VII, Section 5(b)), to have his literature distributed at his own expense by the union (Article VII, Section 7), to have his material published in the *Teamster* (Article VII, Section 10) or posted on the IBT's website (Article VII, Section 11), to designate observers for each phase of the election process (Article IX, Section 1), or to seek and achieve the status of "accredited candidate" (Article X). Further, while the *Rules* impose a duty on all candidates for International office to file Campaign Contribution and Expense Reports (Article XI, Section 2(a)(1), that duty applies only for the reporting periods during which the candidacy is active, and ends when candidacy ends. *Hoffa 2006*, 2006 ESD 325 (July 12, 2006) (member whose candidacy for International office ended when he failed to be nominated at the IBT convention "remains obligated to file a CCER for each period during which he remained a candidate for International office").

While Keegel's withdrawal of candidacy for International office ends his entitlement to rights that are granted to candidates, the issue in this protest is how the withdrawal affects the slate declaration he signed under Article VIII. If Keegel's withdrawal renders him no longer a candidate for any purpose under the *Rules*, Article VIII included, then the slate declaration he signed no longer binds him because it is binding on candidates only and Keegel no longer is a candidate. On the other hand, if Keegel remains a candidate for Article VIII purposes despite his declaration to the contrary, the slate declaration he, Hoffa and Bouvier signed remains effective, and the slate must be comprised of at least those three persons through the completion of the nominations process, cannot be expanded to include other candidates without the express written consent of the existing slate members, Keegel included, and can remove Keegel as a slate member only if he is not nominated for International office through action of the convention body or rejects such nomination.

When the slate declaration was signed, each signer, Hoffa, Keegel and Bouvier, made two pledges to the others: that he was a candidate for International office, and that, as a candidate, he would only run as part of a slate with the others. We hold that this slate declaration bound them to run together on the same slate only if each remained a candidate. The slate declaration did not commit each member to maintain candidacy throughout the entire election cycle and any one could independently withdraw from that status. Withdrawal from candidacy after signing a slate declaration, however, carries with it a bar to re-activating the candidacy. This holding effectuates the purpose of the slate rule, which binds *candidates* to run together who have agreed to run together. It does not, however, force a candidate to continue that candidacy or force a slate to continue to carry a non-candidate as a slate member.

Where a candidate for International office fails to achieve nomination at the convention or does not accept nomination, there is no concern of manipulation of the slate rule to avoid its purpose, for this member who signed the declaration no longer can achieve a place on the union-wide ballot because the time for such nominations has closed. Similarly, a candidate signing a slate declaration who then dies or is declared ineligible has been forced to end the candidacy under circumstances where it cannot be resumed. When the withdrawal occurs pre-nomination, as it has in the instant case, special care must be taken to insure that the withdrawal is intended by the candidate, and is in fact, one that cannot be reversed so as to permit the member to resurface as a candidate for International office at a later date in the same election cycle and in

contravention of previously-declared slate membership. If the withdrawal is not irrevocable, the possibility remains that the member may resume his candidacy, whether because he changed his mind, is drafted by the convention to resume the candidacy, or some similar reason. If any of these were to occur, the slate declaration the member signed during his initial candidacy would still bind him and the other signers.

A withdrawing candidate may eliminate these possibilities and, in the process, deem himself or herself ineligible for election through a voluntary, knowing, and intentional waiver of his right to accept nomination, if such nomination were to occur. The right to accept or reject nomination for International office is set forth in Article III, Section 5(f), *viz.*

A candidate must accept floor nomination in person at the time made, unless he/she is absent and has previously submitted a written acceptance of nomination to the Election Supervisor. A candidate must accept nomination resulting from the secret ballot nomination vote in person prior to the start of the regular business of the morning session of the fifth day of the Convention, unless he/she has previously submitted a written acceptance of nomination to the Election Supervisor. Should all candidates nominated by the secret ballot nomination vote for a particular office decline nomination, or an insufficient number accept nomination, a new nomination for that office shall be conducted.

This provision sets deadlines or end dates both for accepting floor nomination and for accepting nomination resulting from the secret ballot nomination vote. It does not set a start date, before which a candidate cannot reject nomination. As such, we find that a written rejection of nomination may be filed under this provision even before the nomination process has occurred and that such rejection of nomination, if voluntary, knowing and intentional, shall operate to bar any acceptance of nomination under Article III, Section 5(f). If a candidate executes such a rejection of nomination, he ceases to be a candidate for International office, his candidacy for any International office position cannot be resumed under any circumstances, and he is no longer a candidate under the *Rules* for any purpose, including Article VIII relating to slates.

On the facts presented here, we conclude that Keegel has irrevocably withdrawn his candidacy for election to any International office. The July 26 letter to our office, signed by Keegel constitutes a voluntary, knowing and intentional rejection of nomination that cannot be reversed. As a result, Keegel's consent is no longer needed to effect changes to the slate previously formed among him Hoffa and Bouvier. Candidates Hoffa and Bouvier may participate in a slate formed by mutual consent with other candidates and seek "accredited candidate" status for those slate members through use of slate petitions.

For these reasons, 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:

*Halstead*, 2010 ESD 11  
August 2, 2010

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 11*

*Halstead*, 2010 ESD 11  
August 2, 2010

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