

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

<b>IN RE: FRED GEGARE,</b>	)	Protest Decision 2010 ESD 20
<b>BRAD SLAWSON &amp;</b>	)	Issued: August 15, 2010
<b>FRED ZUCKERMAN,</b>	)	OES Case Nos. P-023-081010-NA
	)	
<b>Protestors.</b>	)	
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Fred Gegare, Brad Slawson and Fred Zuckerman, candidates for International 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 James Hoffa and Rome Aloise violated the *Rules* by using a local union hall for a campaign event.

Election Supervisor representatives Christine Mrak and Rochelle Goffe investigated this protest.

**Findings of Fact**

Hoffa and Aloise are candidates for International office. Their campaigns conducted registration for a motorcycle fundraiser on June 23, 2010 at Local Union 533’s hall in Reno, Nevada. The protest challenges use of the hall as a violation of the *Rules*.

Investigation showed that Ron Horner, Aloise’s campaign manager, first inquired into use of the hall in February 2010. He spoke with Paul Tea, principal officer of Local Union 533, who said that the hall could be used for a campaign event. Horner told our investigator that he told Tea at the time that if the hall were made available to the Aloise campaign, it would also have to be offered for other candidates’ use, although no other candidates were known at the time. Horner said that Tea agreed.

Tea told our investigator that he became principal officer of the local union in April 2009, following the removal of the previous principal officer for alleged financial impropriety. Since that time, Tea said he has been occupied by 4 separate audits of the local union’s finances by the IRB and DOL, with additional scrutiny from the NLRB. Tea’s experience as a union representative began as a steward in 2004; he advanced to business agent in 2005 and president in 2008 before taking over the principal officer’s position upon discovery of alleged corruption by the person he replaced. Tea had no experience in local union leadership during the 2005-2006 International officer election.

Local Union 533’s hall is small; Tea estimates its capacity at 50 persons. Prior to the Aloise campaign rental, Tea did not rent the hall for any purpose; he does not know whether it was rented before he assumed union office. Tea does not recall that Horner told him that if he rented the hall for an Aloise fundraiser the same would have to be done for other candidates. However, he does not dispute that when Horner first spoke with him about use of the hall, Horner said there were no known opposition candidates. In light of Horner’s comment, Tea did not focus on the issue of making the hall available to others.

Horner conceded to our investigator that, while he advised Tea of the need to make the hall available to other candidates if it was rented to the Aloise campaign, he did not tell Tea of the need to give advance written notice to other candidates of the hall's availability. Tea told our investigator he was unaware of the requirement. He further stated that he was unaware at the time of the rental that other persons had declared their candidacies for International office. Tea acknowledged seeing a copy of protestor Gegare's letter to Hoffa in late May in which Gegare announced his candidacy for General President. However, he construed the letter as criticism of Hoffa rather than a declaration of candidacy.<sup>1</sup>

The hall was rented for 3 hours on Saturday, June 26, to register Teamster members for a motorcycle ride and poker party to take place that same day. The poker party was held at the Grand Sierra Hotel in Reno. The only part of the hall used was the assembly area; the office portion along with its equipment remained locked and unused during the event. Horner brought in a table, 4 computers, and a printer to handle the registration function. No Local Union 533 personnel worked on the event. Tea charged Horner \$75 for the 3 hour use of the hall. He arrived at this figure by comparing the duration of the rental with his own view of what he would expect to pay for a comparably sized hotel conference room for a labor-management meeting. He did not contact other facilities, however, to obtain comparable prices or otherwise do a market analysis. The Aloise campaign paid the rental charge.

The protestors have not received written notice of the availability of Local Union 533's hall. They do not allege that Local Union 533 has denied them use of the hall for any campaign purpose.

### **Analysis**

Article VII, Section 12(c) of the *Rules* states that union facilities "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." The local union that fails to comply with this provision makes an impermissible contribution to the candidate to whom it rents its facilities. Article XI, Section 1(b)(3). The candidate who accepts the contribution violates this same provision as well as Article XI, Section 1(b)(13), which makes the candidate strictly liable for impermissible contributions.

Here, Local Union 533 met the requirement of Article VII, Section 12(c) with respect to the price of the rental. The \$75 fee it charged for 3 hours' use of the assembly area appears reasonable under the circumstances presented, as Tea set the charge with reference to his view of what would be the rental rate for a similarly sized hotel conference room rented for a similar duration.

The local union did not give advance written notice to the protestors of the availability of its hall for campaign rental, however, and therefore violated that portion of Article VII, Section 12(c). Gegare formally announced his candidacy in late May by a letter that was widely circulated. Tea conceded he had seen the Gegare letter before renting the hall to Aloise.

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<sup>1</sup> This letter was the subject of *Hoffa-Keegel 2011*, 2010 ESD 3 (June 9, 2010). On page 2 of the letter, Gegare stated that he "will be a candidate for the position of General President at the 2011 convention."

The obligation to provide advance written notice to all candidates of the availability of union facilities for campaign use is that of the local union. However, the Aloise campaign also should have insured that Local Union 533 gave the required notice before concluding the rental agreement. While the notice must be given by the local union, the *Rules* do not prohibit the candidate from assisting the local union in identifying other candidates or preparing or transmitting the notice.

That the Aloise campaign should have done more to insure compliance with the *Rules* in this case is evident. Although Tea is responsible for knowing his responsibilities, like any union officer, he is new to his position and has been occupied with several financial audits of his local union. Horner took the first step with Tea by advising that if he rented to the Aloise campaign he would have to make the hall available to other candidates as well. With this advice, Horner addressed the non-discrimination aspect of the *Rules*. However, he did not assist Tea by alerting him to the advance written notice requirement, and Tea did not discover it on his own. The result was a *Rules* violation by the local union and the Aloise campaign.

Accordingly, we GRANT the protest.

In granting the protest, we reject the Aloise campaign's contention that the protest should be rejected as untimely. Although the protest was filed the same date the protestors discovered the alleged violation on the Aloise website, the Aloise campaign complains that the protestors should have discovered it earlier and behaved unreasonably by failing to do so. It is settled law under Article XIII, Section 2(b) that the time for filing is measured from the protestor's knowledge of the alleged violation, not the date the alleged violation occurred. *Gegare*, 10 EAM 3 (July 8, 2010). The protestors were unaware of the Aloise website before the date they filed the protest. We find no evidence that they purposely or unreasonably delayed learning the information the site contained.

### **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 Local Union 533, within 3 working days of receipt of this decision, to send written notice of the availability of its hall for campaign use, including the charges for such use, to the protestors, with copy to our offices. Should any further request be made to the local union during the current election cycle for campaign use of its hall or other facilities, the local union is required to give advance written notice to all candidates who have then declared that the facilities are available for campaign use. We do not require that the local union post a notice with respect to this violation.

We direct the Aloise campaign and the Hoffa campaign, when seeking campaign use of a union facility, to advise the union official involved of the requirements of the *Rules*, namely, the obligations not to discriminate against any candidate, to charge fair market value for use of the facilities, and to give advance written notice of the availability of the facility for campaign use to

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all candidates. Further, we direct these campaigns to insure that such advance written notice has been given before concluding the rental agreement. The campaigns may assist the local union in complying with the notice requirement by identifying the candidates, assembling contact information for them, and preparing and transmitting the notice, although the notice must come from the local union and not from the campaign. We order no further relief with respect to either campaign. All candidate campaigns should be mindful of this requirement and, when seeking to use union facilities, should assist local union personnel in knowing and understanding their obligations under the *Rules* to provide equal access to union facilities.

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 20*

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