

ELECTION APPEALS MASTER

IN RE: JOHN HAILSTONE and SAM  
MARTINEZ

Protestors.

10 Elec. App. 7 (KC)

ORDER

This matter is an appeal from the Election Supervisor's decision 2010 EAD 24 issued September 4, 2010. The appeal was submitted by Sam Martinez, member of Local Union 948 and lead delegate candidate on The Members Slate, Working for You.

A hearing was held before me on September 13, 2010. The following persons were heard by way of teleconference: Jeffrey J. Ellison, Esq., for the Election Supervisor; David J. Hoffa, Esq. on behalf of the Hoffa-Keegel Campaign, John Hailstone, member of Local Union 948 with Cathy Garcia and Veronica Bustamante, and Sam Martinez the protester.

The protester here appeals three rulings of the Election Supervisor in the disposition of his protest.

First, Martinez objects to the Election Supervisor's finding that a supporter of the Martinez Slate posted Martinez campaign literature on the doors and windows of a union hall in Kingsburg, California in violation of Article XI, Section 1 (b)(3) of the Election Rules. Martinez complains that without an eyewitness to establish that the postings were in fact carried out by a supporter of his slate, it is unfair to attribute the postings to his slate. It is settled, however, that under Section 1(b)(15) of the Rules that lack of knowledge as to the source or circumstances of such a posting, which has the effect of benefitting a candidate or slate and injuring an opposing

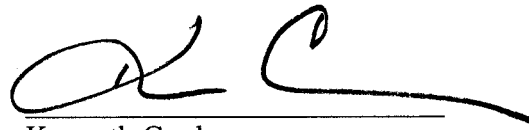
slate, shall not constitute a defense to a violation of the Rules. The plain and undisputed fact that union resources were improperly utilized to support a candidacy is an ipso facto Rules violation. It helped the Martinez slate and hurt the Juarez slate. The Election Supervisor properly imposed a remedy directing the Martinez slate not to post campaign material on union property.

Second, Martinez argues that the Election Supervisor improperly concluded that a Martinez slate supporter Maria Valdavinos posted flyers supporting Martinez and his slate on a company employer bulletin board at Seneca Foods. This finding is based in part upon the evidence of Guadalupe Barajas, who is related to candidates on the Juarez slate. Credibility determinations and factual findings are broadly within the province of the Election Supervisor, and will not be disturbed on appeal absent an abuse of discretion. During the hearing, the Election Supervisor gave an entirely convincing account of why the Election Supervisor did not credit the testimony of Ms. Valdavinos.

Finally, Martinez asserts that an inadequate remedy was imposed in connection with an incident in which a supervisor of the employer Seneca Foods distributed Juarez campaign flyers to 25 employees while handing out paychecks. Because Seneca immediately fired the supervisor, the Election Supervisor concluded that the rank and file membership in a small local understood that Seneca was in fact neutral in the election contest. Although it might have been useful to interview the 25 employees who actually were subject to the strong inference that their superiors were not neutral and supporting the Juarez slate, this step was not essential here, given the immediate discharge of the offending supervisor. As we have noted before, the Election Supervisor's discretion in fashioning an appropriate remedy is broad and is entitled to deference.

Accordingly, the Election Supervisor's decision is in all respects affirmed.

SO ORDERED:

A handwritten signature in black ink, consisting of a large, stylized 'K' followed by a cursive 'C' and a long horizontal flourish extending to the right.

Kenneth Conboy  
Election Appeals Master

Dated: September 14, 2010