

OFFICE OF THE ELECTION SUPERVISOR
for the
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

IN RE: TIM HILL,)	Protest Decision 2011 ESD 367
)	Issued: January 23, 2012
Protestor.)	OES Case No. P-362-011312-FW
_____)	

Tim Hill, member of Local Union 690, filed a post-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 Pat Griffus retaliated against him for activity protected by the *Rules* by filing a civil lawsuit alleging that Hill made written and oral statements that defamed Griffus.

Election Supervisor representative Christine Mrak investigated this protest.

Findings of Fact

This matter arises from the facts found and conclusions reached in our decision in *Reilly*, 2011 ESD 361 (December 16, 2011), *aff’d*, 11 EAM 62 (December 28, 2011). There, we held that Local Union 690 violated the *Rules* when it adopted, at a general membership meeting, a resolution to obtain reimbursement from its elected delegates for expenses they incurred in attending the IBT convention. Minutes of the October 20, 2011 Local Union 690 general membership meeting show that member Pat Griffus made the motion to recover the delegate expenses, and that the motion was adopted by voice vote. Griffus’ motion sought reimbursement for delegate expenses for any time any delegate from Local Union 690 was not in attendance at convention proceedings. We also found that, at the November 17 general membership meeting, Griffus was permitted the floor again, where, according to the meeting minutes, he “clarified” his previous motion to require that all delegates reimburse the local union for all money spent by the local union, with Griffus contending that the delegates “neglect[ed] to actually attend the IBT Convention” and instead treated the convention trip as “a Member funded Las Vegas vacation instead of the serious business of addressing the matters affecting the future of our Union.” We further found that although principal officer Val Holstrom was present on both occasions that Griffus addressed the members on the subject of delegate expenses, he took no action to rule the motion out of order or otherwise state or hold that the motion, if adopted, would require the local union to violate the *Rules*.

On these facts, we held that the resolution Griffus sponsored placed Local Union 690 “on record as attempting to recover from its elected delegates the convention expenses it was required by the *Rules* to pay.” Based on additional facts recited in *Reilly*, we further held that “Griffus’ motion and Holstrom’s failure to rule it out of order and instead to permit it to be adopted, constituted retaliation against the elected delegates because of their political activity in support of Sandy Pope and against James Hoffa,” and that such retaliation violated Article VII, Section 12(g) of the *Rules*. We ordered the local union to rescind the resolution, to cease and desist from all activity seeking to recoup any convention expenses paid to delegates or the alternate delegate, and to post a remedial notice on all worksite union bulletin boards.

Griffus and Local Union 690 filed separate appeals. The Election Appeals Master affirmed our decision in all respects by written decision issued December 28, 2011.

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Local Union 690 conducted its monthly membership meeting and annual holiday party on December 17, the day after our decision issued and before any appeals were filed. At that meeting, protestor Hill distributed copies of our decision to various members, including Griffus and Holstrom, attached to a flyer he created that read as follows:

VAL HOLSTROM

BUSTED

AGAIN!!!

This time Val and his pal Pat
Griffus are guilty of retaliation...

attached is the full report, signed
off by Judge Conboy

Investigation showed that the flyer and decision were distributed only at the membership meeting and were not posted or distributed, either as a package or in separate elements, at worksites. Protestor Hill composed and printed some thirty copies of the flyer, attached a copy of our decision to each one, and distributed fewer than twenty of the packets at the meeting, discarding the rest. He gave one packet to Griffus. Hill reported that, after Griffus read the packet of papers, Griffus threatened Hill that he would sue him. (Griffus declined to provide any evidence to our investigator, stating that he had been instructed by his attorney not to do so. When asked, he also declined to identify the person he claimed was the attorney who gave him the advice not to provide evidence to our investigator. Accordingly, our findings do not include evidence from Griffus because he declined to present any.)

On Monday, December 19, 2011, Griffus filed suit against Hill in the Small Claims division of the District Court for Spokane County, Washington. The suit, prepared on a court-issued form, stated the following:

STATEMENT OF CLAIM

I, Pat Griffus, the undersigned plaintiff, declare that the defendant named above owes me the sum of \$ 5000, which became due and owing on Dec. 17, 2011 [Date]. Plaintiff has demanded payment and Defendant refuses to pay.

The amount is owed for:

Faulty Workmanship Merchandise Auto Damages-Date of Accident _____
 Wages Loan Return of Deposit Rent Property Damage
 Other Libel, Slander, Defamation
Explain reason for claim See Attached

Griffus attached to his suit the following typewritten statement:

On December 17, 2011 at our annual Christmas party with over two hundred people in attendance, Tim Hill distributed a packet of paper containing a legal Decision from the

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elections board with a cover letter that he said he created states in bold writing¹ “VAL HOLSTROM BUSTED AGAIN!!! This time Val and his pal Pat Griffus² are guilty of retaliation...attached is the full report, signed off by Judge Conboy”

I have been in the union for twenty years and I am currently unemployed and the coverage is now being distributed at my potential union employers.

The suit, signed by Griffus, bore a handwritten date of December 19, 2011. It was marked received by the clerk of the court by machine time-stamp showing December 16, 2011 at 8:19 a.m.³

As indicated, Griffus declined to provide any evidence to our investigator. In particular, he provided no evidence supporting the suit’s allegation that Hill’s flyer was being or had been distributed to Griffus’ potential union employers. No evidence was presented to support that allegation, and evidence to the contrary was presented by Hill. Thus, Hill said he limited distribution to the local union membership meeting on Saturday, December 17. Further, Griffus filed his suit early on the ensuing Monday morning, presumably before even he, an unemployed member without access to the offices or worksites of union employers, could determine whether the Hill flyer had reached there.

Although the suit alleged both libel (*i.e.*, written defamation) and slander (oral defamation), Griffus presented no evidence to establish the latter. The only evidence of alleged written defamation that the investigation revealed was Hill’s flyer. The flyer’s statement with respect to Griffus was that Holstrom and Griffus “are guilty of retaliation.” This statement is in all material respects an accurate recounting of our conclusion in *Reilly*, which stated in part the following:

[W]e conclude that Griffus’ motion and Holstrom’s failure to rule it out of order and instead to permit it to be adopted, constituted retaliation against the elected delegates because of their political activity in support of Sandy Pope and against James Hoffa.

Analysis

Article VII, Section 12(g) prohibits a member from retaliating against another member for activity protected by the *Rules*. Hill’s activity in distributing the *Reilly* decision together with a flyer commenting on it was protected by the *Rules* because the decision concerned rights and obligations under the *Rules*. Griffus’ civil suit against Hill sought damages against Hill for alleged injury to Griffus’ reputation. On its face, therefore, Griffus’ suit was retaliation for Hill’s protected activity.

However, Article VII, Section 12(g) does not prohibit a member from commencing a *well-founded* suit for defamation against another member for that member’s speech, because the member bringing the suit retains the right under the First Amendment to the U.S. Constitution to petition government for redress of grievances and that right to petition includes the right to seek relief for alleged personal injury, including injury to reputation. However, a suit for defamation brought in response to *Rules*-protected activity may constitute prohibited retaliation under the *Rules* if it is *not*

¹ So in original.

² Underscoring in original.

³ The date on the time-stamp is incorrect. Our decision in *Reilly* issued Friday, December 16; Hill distributed the flyer and decision on Saturday, December 17, and Griffus filed his suit shortly after the clerk’s office opened on Monday morning, December 19.

well-founded, because a member has no constitutional right to petition government for redress of a claim that is not well-founded. *Hoffa*, P-1019 (October 23, 1996), *aff'd*, 96 EAM (November 8, 1996). The Election Supervisor is authorized to enjoin a suit for damages that constitutes retaliation under the *Rules* and that is not well-founded. *Id.*

We examine Griffus' suit under Washington law, which requires that a defamation plaintiff must establish four elements to prevail on his claim: (1) falsity, (2) an unprivileged communication, (3) fault, and (4) damages. *Mohr v. Grant*, 153 Wn.2d 812, 822, 108 P.3d 768 (2005); *Bender v. City of Seattle*, 99 Wn.2d 582, 599, 664 P.2d 492 (1983).

Griffus' suit had at least two serious flaws that strike at its foundation. First, to establish the falsity element of defamation, the plaintiff must show the offensive statement was "provably false." *Schmalenberg v. Tacoma News, Inc.*, 87 Wn.App. 579, 590-91, 943 P.2d 350 (1997). Hill's flyer characterizing a holding of our decision in *Reilly* was materially accurate. As such, Griffus would be unable to demonstrate that Hill's statement was "provably false."⁴

Second, Griffus' suit could not establish that Hill's communication was unprivileged. Under Washington law, even were Griffus able to establish that Hill's statement was "provably false," an element we conclude he would be unable to do, Hill could avoid liability, as a matter of law, if he established that an absolute or qualified privilege sheltered his statement. We find that Hill enjoyed a qualified privilege to speak for the protection of common interests, which "arises when parties need to speak freely and openly about subjects of common organizational or pecuniary interest." *Moe v. Wise*, 97 Wn.App. 950, 958-59; 989 P.2d 1148 (1999). Washington courts have applied this privilege in cases of limited publication on issues in common between the publisher and recipients. *See, e.g., Ward v. Painters' Local Union No. 300*, 41 Wn.2d 859, 866, 252 P.2d 253 (1953) (privilege extended to union members who made written and oral statements that a member had misappropriated funds while an officer of the union). Investigation demonstrated that Hill's distribution of the flyer and decision was limited to members of the local union, all of whom had a common interest in the subject matter of the alleged defamatory statement, which concerned the local union's violation of the *Rules* and the role that Holstrom and Griffus played in it. Given that Hill's distribution of his statement did not extend beyond those who enjoyed an interest in common concerning the subject matter, we conclude that Griffus would have been unable to establish that Hill's communication was unprivileged.

On January 17, our investigator advised Griffus that he could avoid an adverse decision on this protest if he dismissed his suit against Hill with prejudice to its refiling. Griffus did so, causing an order of dismissal with prejudice to be entered on January 19, 2012.

The dismissal with prejudice relieves Hill of the obligation to defend the suit and of the risk (however slight) of an adverse decision. Accordingly, we conclude that the dismissal resolves the

⁴ With respect to falsity, "expressions of opinion are protected by the First Amendment" and "are not actionable." *Robel v. Roundup Corp.*, 148 Wn.2d 35, 55, 59 P.3d 611 (2002) (quoting *Camer v. Seattle Post-Intelligencer*, 45 Wn.App. 29, 39, 723 P.2d 1195 (1986)). Further, Washington law does not require a defamation defendant to "prove the literal truth of every claimed defamatory statement." *Mark v. Seattle Times*, 96 Wn.2d 473, 494; 635 P.2d 1081 (1981). "A defendant need only show that the statement is substantially true or that the gist of the story, the portion that carries the 'sting,' is true." *Id.* "The 'sting' of a report is defined as the gist or substance of a report when considered as a whole." *Herron v. KING Broad. Co.*, 112 Wn.2d 762, 769; 766 P.2d 98 (1989).

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retaliation that the suit would otherwise represent. On this basis, we deem this protest RESOLVED and we do not order any remedies.

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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