

IN RE:

January 17, 2001  
Advice Request

01 Elec. App. 036 (KC)

This matter is an appeal from the Election Administrator's decision contained in his letter dated January 31, 2001 to J. Douglas Korney, Esq. regarding Mr. Korney's 17 January 2001 advice request, sought on behalf of the Hoffa Campaign.

A hearing was held before me on February 12, 2001. The following persons were heard by way of teleconference: Jeffrey Ellison, Esq. for the Election Administrator's Office; J. Douglas Korney, Esq. of Korney & Heldt, on behalf of the Hoffa Campaign; Bradley T. Raymond, Esq. of Finkel, Whitefield, Selik, Raymond, Ferrara & Feldman on behalf of International Brotherhood of Teamsters; and Betty Grdina, Esq. of Yablonski, Both & Edelman on behalf of the Tom Leedham Slate.

The Hoffa campaign sought formal advice from the Election Administrator ("EA") as to the permissive or restrictive impact of the Rules For the 2000 – 2001 IBT International Union Delegate and Officer Election ("Rules") upon the practice of faxing partisan campaign literature to locals for distribution on campaign tables open to all candidates in the meeting halls of local unions.

The EA in his response dated January 31, 2001, ("EA Letter") opined that the practice is prohibited by the Rules because a) only two of the more than 500 locals have literature tables b) in a previous case (Ostrach) none of 93 randomly selected locals reviewed by

the EA had placed previously faxed campaign material on literature tables and c) in his subjective assessment the model literature attached by the Hoffa campaign to its opinion request is in fact intended not for distribution to the rank and file internally but to the local union infrastructure for distribution externally.

This reasoning is unpersuasive on all three grounds. The right of candidates to distribute campaign literature internally from neutral tables inside union halls has been established as policy of the federal oversight authority for a decade, has been confirmed in Rules case law, which under Article I the EA is obligated to apply, is broadly reflective of public policy embodied in Federal labor law, and serves the Consent Decree's democratic institution building imperative of facilitating campaigning speech and rank and file participation in the electoral process.

Furthermore, there is no objective basis to be found in the text of the model literature attached to the Hoffa campaign opinion request to allow the EA to conclude "that the purpose(s) of the above-described communications would be to communicate directly to the local union infrastructure and/or to have that infrastructure distribute the campaign material outside the local union hall." EA Letter, 1. The EA apparently bases this conclusion not on the text of the literature or upon any stated evidence of plans for external distribution (although the Rules do require local unions to facilitate mailings of candidates' campaign literature to the local's rank and file, as long as the candidate pays for it), but upon the evident absence of campaign tables in the locals now.

The response to this dilemma ought not be the total ban of campaign table distributions in all of the locals, but the enforcement of the requirement imposed upon the locals in the Rules, Article VII (7), to honor candidates' requests and adopt procedures for the distribution of campaign literature under certain circumstances (that all candidates have access to such tables if requested and that candidates reimburse the locals for any union resources expended in the process).

The following provisions of the Rules have a bearing upon the issue raised in the EA's opinion:

Article VII, 5 (4) states that a local union shall not discriminate in favor of or against any candidate in informal campaign activities, such as literature distribution at meetings or through literature distribution tables.

Article VII, 7 (a)(1) states that each candidate shall be permitted a reasonable opportunity, equal to that of any other candidate to have literature distributed (implicitly through campaign tables) by the Union, at the candidate's expense; that each candidate is entitled to a number of mailings, whether or not any other candidates makes such requests; that when the local authorizes such distribution of campaign literature on behalf of any candidate, similar distribution under the same conditions and costs shall be made for any other candidate, if requested; and (2) the local shall honor requests for distribution of literature by mail and 3 (e) the local shall exercise all reasonable efforts to ensure that each candidate's campaign literature is processed and distributed in a complete and prompt manner and (3) (g) the local shall adopt

procedures for complying with candidates' requests for distribution of literature (not just mailing of literature) and shall specifically advise all candidates of those procedures.

Although the foregoing Rules text may be read to allow local unions the discretion to establish campaign tables, such a reading is inconsistent with the mandatory obligation imposed upon locals to facilitate distribution of candidates' campaign literature through the mails, even if a rival candidate has not requested such assistance. Any reading which requires the locals to assist distribution through mailings but gives them the right to refuse assistance in distribution through campaign tables is discriminatory in favor of candidates with greater financial resources. Accordingly, the drafters of the Rules could not have intended such a reading.

The opinion of the EA, as reflected in the EA Letter, is, accordingly, reversed, and the matter is remanded for further proceedings consistent with this decision. The EA will promptly issue an advisory to all locals instructing them of their obligation under the Rules to establish and maintain the use of literature tables and/or bulletin boards for the non-discriminatory, candidate financed distribution of campaign literature inside union halls, including the transmission to locals of material by facsimile machine, and the copying of such material, at the expense of the candidate, at the local. Admonitory language on such materials with respect to ground rules may be required as the EA deems appropriate.

The EA will devise accounting forms, notice language and policing methods which will insure the non-discriminatory and non-union financed character of such exercise of campaign rights by candidates in full compliance with the Rules. The EA is accorded substantial flexibility and discretion in devising a fair and practical process that serves the spirit and the substance of the Rules.

\_\_\_\_\_/s/Kenneth Conboy\_\_\_\_\_  
Kenneth Conboy  
Election Appeals Master

Dated: February 21, 2001