

IN RE:

IN RE: JOHN HULL

01 - Elec. App. – 037 (KC)

This matter is an appeal from the Election Administrator's (the "EA") decision 2001 EAD 153, issued February 10, 2001. The hearing was requested by Cynthia D. Watson, Esq. of Watson Kucey, on behalf of Ray Bartolotti, a candidate on the "Hoffa Canadian Unity" Slate and member of Teamsters Local Union 938 in Mississauga, Ontario, Canada.

A hearing was held before me on February 16, 2001. The following persons were heard by way of teleconference: Jeffrey J. Ellison, Esq. and Gwen Randall, Esq. for the Election Administrator's Office; Ms. Watson, on behalf of Mr. Bartolotti; Mr. Bartolotti; and Michael Goldberg, Esq., on behalf of John Hull, the protestor and candidate on the 938 Members Slate. This office received an additional submission from Ms. Watson on February 15, 2001.

The protest in this matter concerns asserted Rules violations regarding campaign contributions. Mr. Hull claims that a letter sent from Trader General Insurance Company (the "Trader General Letter") in late January 2001 to all Local 938 members, using Local Union 938 labels, letterhead and envelopes, was campaign literature and that Mr. Bartolotti abused his position as president of Local Union 938 to campaign with union resources.

As a result of his investigation, the EA determined there were several violations of Article XI of the Rules. First, he found the Trader General Letter to be campaign literature based on two factors: (1) that the three references to Mr. Bartolotti in the Trader General Letter were not neutral or merely informational in tone but in praise of Mr. Bartolotti's role in bringing

the program to the members; and (2) the January 2001 timing of the Trader General Letter mailing was just two weeks after the second Local Union 938 nomination meeting and three weeks before the mailing of the ballots, whereas previous annual letters had been sent out in March. Therefore, the EA concluded that the purpose, object or foreseeable effect of the Trader General Letter was to positively influence the election of a candidate in violation of Article XI, Section 1(b)(2). Second, since the Trader General Letter was prepared and paid for by an employer, the EA determined that it was an improper campaign contribution in violation of Article XI, Section 1(b)(4). Finally, since local union resources, which included, as noted, union letterhead, envelopes and mailing labels, had been used to send the Trader General Letter, there was a violation of Article XI, Section 1(b)(6) which prohibits the use of union resources to promote any individual or slate candidacy.

Ms. Watson, counsel for Mr. Bartolotti, argues¹ that Mr. Bartolotti was unaware the Trader General Letter would promote him in such a positive manner. In the appeal submission, Ms. Watson claims that although Mr. Bartolotti and Leo F. Blain, the drafter of the letter, discussed its general contents, Mr. Blain did not read the Trader General Letter nor mention the three references to Mr. Bartolotti. In addition, Mr. Blain states² that since he was in

¹ In the appeal submission, Ms. Watson argues that since the EA did not contact or speak to Mr. Bartolotti about the allegations, he was denied the opportunity to present any evidence and such was a denial of “natural justice and failure [on the part of the EA] to recognize the principals of due process” (See, Page 2, Appeal on Behalf of Ray Bartolotti, dated February 14, 2001). However, the EA’s “Acknowledgement of Filing Letter, Protest Case No. PR020212CA”, dated February 2, 2001, states, “... All interested parties, including the... individual(s)...who are a subject of the protest, should **immediately** (emphasis supplied) contact the Election Administrator representative assigned to this case with all information relevant to the allegation contained in the protest.” Since Mr. Bartolotti was on the letter’s distribution list and admitted during the appeal hearing that he was aware of the protest filing, it was Mr. Bartolotti who had the affirmative duty to contact the EA representative, Gwen Randall, and provide her with evidence and/or argument in support of his position. Therefore, I find that Ms. Watson’s argument is without merit.

² The additional submission by counsel for Mr. Bartolotti on February 15, 2001 was an affidavit of Mr. Blain, explaining his role in this matter.

fact unaware that Mr. Bartolotti was running for delegate, the Trader General Letter could not be construed as a promotion of his candidacy.

However, as Mr. Ellison pointed out during the hearing, whether Mr. Bartolotti knew of the Trader General Letter contents is irrelevant, since under Article XI, Section 14, a candidate's ignorance that employer or union funds were used to promote his candidacy is not a defense to a Rules violation. A candidate is held to be strictly liable, under Article XI, Section 13 to insure that no contribution received violates the Rules and to promote a level playing field for all candidates in the race for office.

In his explanation of the remedies, the EA in his decision makes reference to a number of protests previously filed against Mr. Bartolotti by Mr. Hull and others. In Hull, 2001 EAD 71 (December 21, 2000), Mr. Bartolotti was found to have violated the Rules in attempting to prevent the distribution of campaign materials and was ordered, inter alia, to post a notice which outlined these violations and the remedies imposed by the EA. In Hull, 2001 EAD 116 (January 30, 2001) the EA found Mr. Bartolotti's delay in posting ordered in Hull, 2001 EAD 71 until after the nomination meeting to be inexcusable and required him to now mail the notice at his expense to each Local Union 938 member. In Mazak, 2001 EAD 104 (January 25, 2001), Mr. Bartolotti was found to have deliberately removed campaign literature of the opposition slate from union bulletin boards, and in his remedy the EA stated that any further Rules violations by Mr. Bartolotti would, absent good cause, result in his disqualification as a candidate.

These previous violations, Mr. Ellison argues, justify the order requiring Mr. Bartolotti to fund a mailing of an EA letter to all members, advising them of Mr. Bartolotti's violation of the Rules. Although a simple posting is the usual remedy, Mr. Bartolotti's past

violation of a timely posting order, requires a mailing in order to insure the notice is received by the membership. The reimbursement of the insurance company and the local union, as ordered by the EA, goes to cure the Article XI, Section 1(b)(2) and (6) violations of improper employer contributions and the use of union resources, respectively. The final remedy, that Mr. Bartolotti pay the full cost for a one page mailing of campaign literature requested by any opposition or independent slates, was designed to cure the benefit to Mr. Bartolotti of the Trader General Letter mailing and allow a more level playing field for all slates.

In his appeal submission Mr. Bartolotti requests a review of the remedial relief imposed in the instant protest, arguing that such relief is punitive in nature. I observe that some remedies that can be imposed under the Rules, such as the disqualification of candidates, are indeed punitive. Others, such as imposed monetary obligations, may serve multiple purposes, including punitive (to discourage the violators from repeated flouting of the Rules), cautionary (to discourage others who might be tempted to violate the Rules) and remedial (to level the playing field).

Mr. Bartolotti points out that the cost of the mailings contemplated by the remedy would be approximately \$30,000, which he submits is excessive, punitive and indeed, counter productive to the EA's objective of creating a level playing field. In addition, Mr. Bartolotti requests that the letter he is required to mail on behalf of the EA is inappropriate in that it is misleads local union members as his culpability with regard to his acceptance of improper campaign contributions.

I will not disturb the remedies imposed by the EA against Mr. Bartolotti. Therefore, as was held in Hull, 2001 EAD 166, these remedial obligations shall be accomplished

no later than 5:00 p.m. on February 23, 2001, absent any extension granted by the EA.

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

_____/Kenneth Conboy_____
Kenneth Conboy
Election Appeals Master

Dated: February 21, 2001