

IN RE:

KEITH NOLL & DON RICCIO

01 - Elec. App. – 056 (KC)

This matter is an appeal from the Election Administrator's (the "EA") decision 2001 EAD 294, issued March 31, 2001. An appeal was requested by Robert M. Baptiste, Esq. on behalf of the Roc/DC Slate of Teamsters Local Union 429 in Reading, Pennsylvania.

The hearing was held before me on April 5, 2001. The following persons were heard by way of teleconference: Jeffrey J. Ellison, Esq., for the Election Administrator's Office; Mr. Baptiste; Thomas Rochowicz, president of Local Union 429 and delegate candidate on the Roc/DC Slate; Don Riccio, a member of Local Union 429 and delegate candidate on the Riccio-Concordia slate; Keith Noll, a member of Local Union 429 and delegate candidate on the Shappell/Noll Slate; William Shappell, a member of Local Union 429 and delegate candidate on the Shappell/Noll Slate; Rich Eline, a business agent of Local Union 429 and alternate delegate candidate on the Roc/DC Slate; and Gerry Ray, a member of Local Union 429 and candidate on the "3 for Hoffa Slate". Submissions were received from Mr. Baptiste and Mr. Shappell on April 4, 2001.

This decision consolidated several protests filed by Mr. Noll and Mr. Riccio against members of the Roc/DC Slate. First, Mr. Noll claimed that the Roc/DC Slate improperly used Local Union 429's bulk mail permit to send out its campaign literature without including a Rules-imposed disclaimer. Second, he alleged that Mr. Eline violated the Rules by removing the slate's campaign literature from a worksite bulletin board. Third, Mr. Riccio contends that Mr. Rochowicz used union resources to send the membership, two days before the ballots were

mailed, copies of a report by Frank Gillen, president of Joint Counsel 53 (the “Gillen Report”), which, in its summary of an investigation done by Mr. Gillen into allegations against Local Union 429 officers, criticized Mr. Riccio's past performance as an officer and praised the present officers, including Mr. Rochowicz.

The EA concluded that the Roc/DC Slate violated the Rules in all three cases. In the protest concerning the bulk mailing, the EA found that the Roc/DC Slate material, although clearly campaign literature, was not adequately identified as not being endorsed by Local Union 429 in compliance with Article VII, Section 7(a)(3)¹. In addition, the mailing contained the return address of the Local Union, strengthening the impression that the campaign literature had come from and was endorsed by the Local Union. Mr. Baptiste, counsel for the Roc/DC Slate headed by Mr. Rochowicz, argued that the EA’s interpretation of the Rules, in these circumstances, was “overly literal”, since the Rules do not quote or require any specific language and that the campaign flyer, which was labeled as “Campaign Literature” complied with the spirit and purpose of the Rules.

With regard to Mr. Eline’s removal of campaign literature, the EA determined that Mr. Eline had indeed violated the Rules by not only removing the flyer from the bulletin board while on union time², but also by using his official position as business agent to counter-endorse a candidate, which is not permitted by the Rules unless done in his individual capacity³. Although conceding that the conduct of Mr. Eline was not appropriate, Mr. Baptiste urged the EA to find, as he did in both Stroud, 2001 EAD 217 (March 6, 2001) aff’d, 01 Elec. App. 51 (March 28, 2001)

¹ Article VII, Section 7(a)(3) states “All literature distributed through the use of the nonprofit organization bulk-rate permit shall clearly state that it is campaign literature, the content of which are not endorsed by the Union”.

² Mr. Eline admitted that he took the literature off the board because he was “upset” over the allegations it made against his slate.

and Stephenson, 2001 EAD 139 (February 6, 2001), that since the conduct was almost immediately corrected⁴, the protest should have been deemed resolved.

Clearly the decisive finding in this case is the EA's determination that the mailing to the membership of the Gillen Report at union expense by Local 429's President and candidate Mr. Rochowicz two days before the ballots were sent out was an unauthorized act of campaigning under the Rules.

Mr. Baptiste argues that Mr. Rochowicz, as an officer of the Local Union, had the right, and indeed the duty, to bring to the attention of the membership the substance of the Gillen Report which: (a) related the outcome of a major investigation into Local Union 429's financial affairs, as was ordered by the General President; (b) was prepared by a non campaign neutral; and (c) made no reference whatsoever to the campaign. Mr. Baptiste insists that the EA has misapplied Martin, 95 Elec. App. 18 (October 2, 1995) and other cases cited in his opinion.

We should note that the EA made clear in his findings that, under the tone, content and timing test that we are required to apply, the union publication, in this case the Gillen Report, did not offend the Rules in either its tone or content. Relying on the timing analysis set out in Martin, the EA concluded that the extraordinarily close proximity between the Local Union mailing of the Gillen Report and its mailing of the ballots (two days), violated the Rules. He found that the political character and political motivation with respect to the use to which the Gillen Report was put, is unmistakable and conclusively established.

³ In response to a witness's objection to the removal of the literature, Mr. Eline was found to have told him that since he, Mr. Eline, was the business agent, he could do what he wanted.

⁴ According to the EA investigation, the time between the Shappell-Noll Slate flyer being taken down and then re-posted was approximately a half-hour.

I agree, but I go further. The Gillen Report is not a final resolution of the investigation into Local Union 429. It is, by its terms, an assessment and recommendation given by a subordinate (Mr. Gillen) to a superior (the General President). It was unrefuted at the hearing that the release to the general membership of the communication between Mr. Gillen and General President Hoffa was unauthorized and improper. Accordingly, the “right” of incumbent candidates to “advise and report to the membership on issues of general concern”, established in Martin, at 5, and related cases, is inapplicable here. Indeed, what Mr. Rochowicz did in this election eve mailing, since the Gillen Report was sent without the permission or indeed the knowledge of Mr. Gillen and General President Hoffa, was to enlist them as unknowing conscripts into his campaign to win the votes of those into whose hands the Gillen Report was put.

Considering these protests in a post-election context, the EA had to determine if these violations affected the outcome of the election as prescribed under Article XIII, Section 3(b) of the Rules. Based on the narrow 18 vote margin of victory between a successful and unsuccessful delegate candidate, and the 30 vote margin between the successful and unsuccessful alternate delegates, the EA concluded that the improper conduct of the Roc/DC members may have affected the results of the Local Union delegate election. Accordingly, the EA directed Local Union 429 to re-run its delegate election, with a ballot mailing to take place on Monday, April 9, 2001, as well as posting of a notice ordering a rerun election on all local hall and worksite union bulletin boards.

Accordingly, I affirm in all respects the EA’s decision and the remedies prescribed therein.

s/Kenneth Conboy

Kenneth Conboy
Election Appeals Master

Dated: April 6, 2001