

IN RE:

JAMES SCOGNAMIGLIO

01 - Elec. App. – 066 (KC)

This matter is an appeal from the Election Administrator's decision 2001 EAD 334, issued May 1, 2001. The appeal hearing was requested by James Scognamiglio, the protestor and independent delegate candidate from Teamster Local Union 703 in Chicago, Illinois.

A hearing was held before me on May 8, 2001. The following persons were heard by way of teleconference: Jeffrey J. Ellison, Esq., for the Election Administrator's Office; Mr. Scognamiglio; Howard C. Murdoch, president of Local Union 703; Tom Stiede, secretary-treasurer of Local Union 703; Pat Bruno, business agent of Local Union 703; and Bret Subsits, employee of Dominick's Finer Food's in NorthLake, Illinois. A pre-hearing submission was received on May 8, 2001 from Bradley T. Raymond, Esq., on behalf of the International Brotherhood of Teamsters (the "IBT") and a post-hearing submission was received on May 8, 2001 from Mr. Ellison in response to my request at the appeal hearing.

Mr. Scognamiglio, an employee of Dominick's Finer Foods ("Dominick's"), alleged that various members of Local Union 703 and employees of Dominick's and its sister warehouse, Donna's Distribution, circulated, on union time, negative information about him at his place of work two days after the ballots in the delegate election were mailed. The EA found this conduct to have violated the Rules and ordered a rerun of the delegate election, posting of a notice informing the membership of the rerun and the associated Rules violations, and other remedies associated with these violations (See Pages 7 and 8, 2001 EAD 334 (May 1, 2001)). Messrs. Murdoch, Stiede and Bruno (the "703 Appellants") appealed this decision, urging the

reversal of the EA's decision. The protestor also appealed, and requested that Mr. Stiede be disqualified from participating in the rerun election.

On March 23, 2001, Local Union 703 received reports issued by the IBT's Internal Review Board (the "IRB Reports") concerning Mr. Scognamiglio and other Local Union 703 members. The IRB Reports recommended that charges be filed against Mr. Scognamiglio for conduct unbecoming a Teamster, for associating with the former principal officer, who had been barred from the union for refusing to investigate his father, a fellow union member who had been convicted of labor racketeering.

On March 27, 2001, Local Union 703 delegate election ballots were mailed. Two days later, coinciding with members' receipts of these ballots, Messrs. Murdoch and Bruno went to Dominick's and distributed, on union time, copies of the IRB Reports. Witnesses at the facility claim that Dominick's shop stewards, while on employer time, also handed out copies of the IRB Reports. The 703 Appellants claim the purpose behind the distribution was to stop rumors, allegedly being spread by Mr. Scognamiglio, that Messrs. Murdoch and Stiede were under investigation and were about to be thrown out of the union. However, in a letter addressed to the Office of the Election Administrator dated April 5, 2001 ("OEA Letter"), Mr. Murdoch indicated that the distribution of the IRB Reports had an "election-based rationale", stating "[t]here could not be more relevant information for the members to consider in determining whether to make an individual their representative at an International Convention... It is important that such information be provided to union members so that they can make an intelligent choice of who should represent them at the Convention." (See, Page 3, OEA Letter).

The EA concluded, based on the admissions made by Mr. Murdoch in the OEA Letter and the timing of the distribution, calculated to be in the hands of members at the same

time the members received their delegate election ballots, that the distribution of the IRB Reports was campaign activity. As to the manner of the distribution, the EA also found the 703 Appellants violated Article VII, Sections 11(a) and (b) prohibiting campaigning during work hours and Article XI Section 1(b)(2), prohibiting employer contributions by allowing employers to campaign for candidates on employer time. Finally, in examining the length of time taken to accomplish the distribution, the EA concluded that this was not incidental campaigning permitted under the Rules in Article VII, Section 11(a) and Article XI Section 1(b)(7).`

Considering this protest in a post-election context, the EA concluded that a rerun of the delegate election was warranted. Based on the content, timing and number of IRB Reports put into circulation, whether done by the 703 Appellants, Dominick's shop stewards or fellow employees, the EA concluded that members' voting intention could have easily been affected, and that a swing of only 156 votes would have tied the count.

In support of the EA's decision, Mr. Ellison argues that the facts in this case are similar to those in Noll, 2001 EAD 294 (March 31, 2001), aff'd 01 Elec. App. 56 (KC) (April 6, 2001). In Noll, it was alleged that union resources were used to send to the membership, two days before the ballots were mailed, copies of a report similar in nature to the IRB Reports. This report, written by Frank Gillen, president of Joint Counsel 53 (the "Gillen Report") was a summary of an investigation done by him into allegations against Local Union 429 officers. In the report, Mr. Gillen was very critical of one candidate's past performance as a local union officer and praised the present local union officers, also candidates in the local union delegate election.

Like the IRB Reports, the Gillen Report was not a final adjudication but only offered recommendations as to a future course of action. The EA found there, as here, that the

purpose in mailing of the Gillen Report was to sway votes in that delegate election and its mailing was timed to achieve maximum impact on voters and therefore may have affected the election outcome. And in Noll, as well as in the instant case, it was foreseeable that the Gillen Report would influence voter decisions because the source of the information, the neutral representative of General President James P. Hoffa, gave importance to the content of the message.

Mr. Ellison also argues this case is similar in analysis to DiPietro, 2001 EAD 324 (April 20, 2001), aff'd 01 Elec. App. 62 (KC) (April 27, 2001). In DiPietro, a campaign flyer was circulated a few days before the delegate election ballots were mailed out. The flyer apparently contained false information used to attack the president of Local Union 773, a delegate candidate. In response to this apparently false and misleading flyer, John Monahan, Secretary-Treasurer of Local Union 229, prepared and sent, using Local Union 229 letterhead and under his signature, a letter (the “Monahan Letter”) refuting certain critical claims in the flyer. Five hundred copies of the letter were made and distributed at various UPS worksites a day after the delegate election ballots were mailed.

In DiPietro, the EA ordered the delegate election to be rerun based on several factors. First, there were a large number of copies of the Monahan letter distributed at worksites which employ hundreds of members, so there was a target audience well in excess of the one hundred and two vote difference between the winning candidate with the lowest vote and the losing candidate with the highest vote. Second, the distribution of the flyers occurred at the same time the members were receiving their ballots, ensuring the Monahan letter would have maximum impact, with minimum opportunity for response. Finally, the subject of the letter was an important issue in the campaign and was likely to sway voters. And, as in Noll, it was

foreseeable that the Monahan Letter would bear on the voters' decision because the author of the letter, a high-ranking officer in a neutral local union, enhanced the message.

The recently decided Richards, 2001 EAD 328 (April 26, 2001), aff'd in part, rev'd in part, 01 Elec. App. 63 (KC) (May 3, 2001), 01 Elec. App. 63 (Supplemental) (KC) (May 14, 2001) does not control the matter before us. The holding in Richards precisely turns on the lack of materiality, the de minimus nature of the modest, quantified amount of union resources (\$175) implicated in the protest. Blank union buttons, virtually worthless, were later legitimately transformed by the application of non-union resourced political slogans. The underlying violation was found to be too marginal in weight and substance to have provided a basis for concluding that a landslide election victory may have been affected by the violation.

This case presents not a dollar and cents issue of stamps, paper or fax machines, but something quite different. Here the local union itself took up political weapons on a partisan basis, and whether the IRB Reports contain the whole truth or no truth is quite beside the point. At a critical point in the balloting, the 703 Appellants commandeered the time and resources of the local union to broadcast its campaign message.

Mr. Murdoch claims that the EA's attribution of a political motive to the timing of the distribution of the IRB Reports is erroneous. He insists that the timing of the distribution had nothing whatsoever to do with the delegate election, but rather the purely circumstantial fact that the IRB Reports were not delivered until the late afternoon of March 23, 2001. As to the manner of distribution, Mr. Murdoch claims that the IRB Reports were only circulated at the two facilities where the false accusations against him and Mr. Stiede had been made, and if it was their intent to influence the membership's votes, the IRB Reports would have been distributed to all members at every worksite. Finally, he asserts, in direct contradiction to his aforementioned

statement in the OEA Letter, that the distribution was not campaign related, but was simply a matter of general concern to the membership. I reject this assertion in light of his forthright and honest statement in the OEA Letter that campaign politics, pure and simple, drove the IRB Report distribution tactics.

Unsatisfied with the EA's remedy, Mr. Scognamiglio urges me to disqualify Mr. Stiede because, as he argued at the appeal hearing, Mr. Steide distributed the IRB Reports solely to discredit him. This completely misses the point. What Mr. Scognamiglio does not understand is that the Rules do not in any way limit Mr. Stiede's right to discredit a political opponent, other than to restrict him from doing so on union time or with union resources. Furthermore, Mr. Stiede's violation of the Rules is of insufficient magnitude or seriousness to warrant disqualification. See, Cheatem, Post-27-EOH et al. (November 17, 1997); Hoffa, P770 (June 21, 1996), aff'd, 96 Elec. App. 210 (July 11, 1996).

I concur with the analysis and conclusion of the EA. The precedent in the Noll and DiPietro decisions controls this case. A nullification of the election results and the ordering of a rerun are entirely justified by this record. Accordingly, I affirm the EA's decision and remedies in their entirety.

_____/s/Kenneth Conboy_____
Kenneth Conboy
Election Appeals Master

Dated: May 16, 2001